THE LAW

RELATING TO

BENEFIT BUILDING SOCIETIES,

6 & 7 WILL. IV. c. 32,

WITH PRACTICAL NOTES, OBSERVATIONS ON THE ACT, AND ALL THE CASES DECIDED THEREON.

TOGETHER WITH

A FORM OF RULES FOR A PERMANENT BENEFIT BUILDING SOCIETY, AND A FORM OF MORTGAGE TO THE TRUSTEES.

By W. TIDD PRATT, Esq.

OF THE INNER TEMPLE, BARRISTER-AT-LAW.

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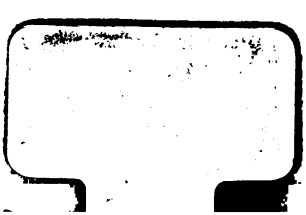

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TO

THE REGISTRAR OF FRIENDLY SOCIETIES

IN ENGLAND,

THE FOLLOWING WORK IS DEDICATED,

BY HIS SON,

THE AUTHOR.

PREFACE.

To supply a deficiency which has been long felt, the Author was induced to undertake this work. He trusts that it will be found to contain all the necessary information connected with the Law relating to Benefit Building Societies. The Act itself has been carefully examined, and all the cases decided to the present time are given *at length* in the Appendix. No notice has been taken of many points respecting the proper working and management of these Societies, in consequence of the excellent Treatise on this subject by Arthur Scratchley, M.A., Actuary to the Western Life Assurance Society, London, who is, I believe, preparing a second edition with material extensions.

8, New Square,
Lincoln's Inn.

CONTENTS.

THE LAW

RELATING TO

BENEFIT BUILDING SOCIETIES.

Of the Formation of Benefit Building Societies.

BEFORE any steps whatever can be taken to give publicity to the intended formation of a Benefit Building Society, the rules thereof must be duly certified under the provisions of the Act for the Regulation of Benefit Building Societies (the 6 & 7 W. 4, c. 32), as amended by the 9 & 10 Vict. c. 27, or otherwise the promoters of such intended society will render themselves liable to the penalty imposed by the Joint Stock Companies Registration Act, the 7 and 8 Vict. c. 110; for, by the 24th section of that Act, (which applies to every joint stock company, as therein defined, established in any part of the United Kingdom, for any commercial purpose, or for any purpose of profit, *except benefit building and other societies* duly certified and enrolled under the statutes in force respecting such societies), it is enacted, that "if *before* a certificate of provisional registration shall be obtained, *the*

promoters, or any of them, or any person employed by or under them, take any monies in consideration of the allotment, either of shares or of any interest in the concern, or by way of deposit for shares to be granted or allotted, or issue in the name or on behalf of the company, any note or scrip, or letter of allotment, or other instrument or writing to denote a right or claim, or preference or promise, absolute or conditional, to any shares, or advertise the existence, or proposed formation of the company, *or make any contract whatsoever, for, or in the name, or on behalf of such intended company*, then every such person shall be liable to forfeit, for every such offence, a sum not exceeding twenty-five pounds; and that it shall be lawful for any person to sue for and recover the same by action of debt."

The course of proceeding necessary to be adopted to obtain the certification of the rules of an intended society is as follows:—

Two copies of the rules, written on paper or parchment, signed by three members and the clerk or secretary, must be sent (with the fee of one guinea) to the registrar of friendly societies in England, Scotland, or Ireland, as the case may be, for the purpose of ascertaining whether the rules are calculated to carry into effect the intention of the parties framing them, &c., and are in conformity to law, and the provisions of the statutes in force relating to such societies; and the registrar is to give a certificate on each of the said copies, that

the same are in conformity to law, and to the provisions of the statutes in force relating to such societies, or point out in what part or parts the said rules are repugnant thereto. The registrar is to return one of the copies to the society, and to keep the other, *and all rules and alterations, from the time when the same are certified by the registrar, are binding on the members and officers of the society.* (4 & 5 W. 4, c. 40, s. 4, and 9 & 10 Vict. c. 27, s. 12.)

If any alterations or amendments are at any time made in such rules, the same course must be pursued; and an affidavit of the clerk or secretary, or one of the officers of the society, that the provisions of the Acts under which the rules have been certified have been complied with must also be transmitted. The affidavit should be in the following form:—

I, ——, of ——, the clerk (or secretary, or one of the officers) of the —— society, held at ——, in the county of —— make oath and say, that in the making the alterations (or amendments) in the rules of the said society, the provisions of the Act under which the rules of the said society are certified have been duly complied with.

Sworn this —— day of ——18—,
before me.

A Justice of the Peace acting for ——————

The fee payable to the registrar for his certificate is one guinea, but he is not entitled to a fee

in respect of any alteration or amendment of any rules, upon which one fee has been already paid within the period of three years, nor for any certificate to rules, &c., which are copies of any that have been certified by him, and duly enrolled. (4 & 5 W. 4, c. 40, ss. 4, 5.)

Besides being exempted from the operation of the Joint Stock Companies Registration Act, a benefit building society, by having its rules duly enrolled, derives many other benefits, for—

1st.—The rules are binding, and may be legally enforced. (10 Geo. 4, c. 56, s. 8.)

2nd.—Protection is given to the members, &c., in enforcing their just claims, and against any fraudulent dissolution of the society. (s. 26.)

3rd.—The property of the society is declared to be vested in the trustee or treasurer for the time being. (s. 21.)

4th.—The trustee or treasurer may, with respect to property of society, sue and be sued in his own names. (*Ib.*)

5th.—Fraud committed with respect to property is punishable by justices. (s. 25.)

6th.—Disputes in certain cases are to be settled by reference to justices, or arbitrators, whose order, or award, is final. (s. 27.)

7th.—Priority of payment of debts, in case officer, &c., of society become bankrupt, insolvent, has an execution, &c., against his property, or dies. (4 & 5 W. 4, c. 40, s. 12.)

8th.—In case of death of members, payment may be made of sum not exceeding £20,

without the expense, &c., of obtaining letters of administration. (10 Geo. 4, c. 56, s. 24.)

9th.—Members are allowed to be witnesses in all proceedings, criminal or civil, respecting property of society. (4 & 5 W. 4, c. 40, s. 10.)

10th.—Exemption from stamp duty of all securities given to the society (10 Geo. 4, c. 56, s. 29.); and

Lastly, no reconveyance of the mortgaged property is necessary on the termination of the society, or on repayment of the money advanced. (6 & 7 W. 4, c. 32, s. 5.) It is also exempt from the operation of the Joint Stock Companies Winding-up Act, 1848, the 11 & 12 Vict. c. 45, for, by the second section of that Act, it is enacted, "That all benefit building societies, other than such as are duly certified and enrolled under the statute in force respecting such societies, shall be liable to the operation of this Act."

In framing the rules of such a society, the following observations may be useful:—The rules must not be repugnant to the laws of the realm, or the provisions of the Acts relating to such societies, and may inflict reasonable fines and forfeitures, and they may be altered and amended (6 & 7 W. 4, c. 32, s. 1). One of the rules must declare the intents and purposes for which the society is "established, and in doing so it will be as well to follow the words in the enacting part of the statute, and to state that the society is esta-

blished for the purpose of raising, by monthly subscriptions of — per share, not exceeding £ — each, a stock or fund to enable each or any member to receive out of the funds thereof the amount or value of his share or shares therein, to erect or purchase one or more dwelling-house or dwelling-houses, or other real or leasehold estate, to be secured by way of mortgage to the society, until the amount or value of his share or shares shall have been repaid to the society, with all fines and other payments incurred in respect thereof." One of the rules must also declare to what uses the money subscribed, &c., shall be appropriated, and impose a penalty on its misappropriation. (10 Geo. 4, c. 56, s. 3.)

The place or places at which the society is to hold its meetings, the powers and duties of the members at large, and of committees or officers, must also be specified; and the rules must state the number of officers, and for what purpose, and in what manner they are to be elected, and for what time they are to continue in office (sect. 11), as also the number of members constituting the committee (sect. 12); and they must also specify in what manner disputes are to be settled, whether by arbitration or justices: and if by the former, the number of arbitrators, and the mode of electing them (sects. 27 & 28). Provision must be made by one of the rules for the preparation by the treasurer, trustees, stewards, or other principal officers, once in every year, of a statement of the funds and effects of the society; specifying in whose custody they then remained, together with

an account of all receipts and expenses since the publication of the preceding statement (sect. 38).

The rules should provide that on the death or *removal* (see sect. 21) of any trustee, a rule appointing a new trustee should be made by the society and duly enrolled as a rule thereof. Unless this is done, it will be very difficult to prove to the satisfaction of a purchaser, on any future sale by the member, that the persons signing the receipt on the mortgage deed, in order to vacate the same, were the then trustees of the society.

Particular care should be observed in framing the rule, giving a borrowing member power to redeem the property mortgaged by him to the society, and the terms upon which he may do so should be distinctly and clearly set forth, and it would seem from the cases decided on this point, that it would be better to declare by the rule that a member wishing to redeem, may do so upon payment of such a sum of money as by the terms of the mortgage deed would be deducted from the monies to be received from a sale of the mortgaged premises, in case the same were sold by the trustees of the society under the power contained in the deed, after payment of all the expenses to be incurred in or about such sale, or to adopt a rule similar to the one in the set of rules in the Appendix.

Observations on the Act 6 & 7 Will. 4, c. 32, and the Rights and Liabilities of the Society and its Members.

Who may be members.

It is quite plain that benefit building societies were meant by the legislature to be constituted for the benefit of *individuals*, and that persons combining together and forming a joint stock company are not proper persons to be members of such societies. This point arose in the late case of *Dobinson* v. *Hawks*, 16 Sim. 407 (*infra*, p. 33); and it was held, that a number of persons forming a joint stock brewery company, could not be members of a building society.

What amount of interest a member may have.

In consequence of the limit placed upon the value of a share in the 1st section of the Act, a question arose whether any one member of a benefit building society could acquire a larger interest than £150 in respect of his share or shares in the society; and in *Cutbill* v. *Kingdom*, 1 Exch. Rep. 494 (*infra*, p. 35), it was intimated by one of the learned barons, that the intention of the legislature was not to allow any one member to have an interest exceeding £150; but as the objection was not taken at the trial, no decision was come to on the point. In the late case, however, of *Morrison* v. *Glover*,

19 Law Journal N.S. (Exch.) 20 (*infra*, p. 39), it was held that a member might hold shares exceeding £150 in value. Another question which has arisen upon the construction of this section is, whether property of the nature of copyhold tenure is included within its operations; and this has occurred in consequence of the words used in the preamble, "freehold or leasehold property," not being of so extensive an import as those used in the enacting part, "dwelling-house, or dwelling-house or other real or leasehold estate." *In Doe* v. *Brandling*, 7 Barn. & Cr. 660, Lord Tenterden said that in construing Acts of Parliament we are to look not only at the language of the preamble, or of any particular clause, but at the language of the whole Act. And if we find in the preamble, or in any particular clause, an expression not so large and extensive in its import as those used in other parts of the Act, and upon a view of the whole Act we can collect the real intention of the legislature, it is our duty to give effect to the larger expressions, notwithstanding the phrases of less extensive import in the preamble, or in any particular clause.

Whether copyholds are included.

In *Crespigny* v. *Wittenoom*, 4 T. R. 793, it was laid down, that the preamble cannot control the enacting part of a statute which is expressed in clear and unambiguous terms; but if any doubt arise on the words of the enacting part, the preamble may be resorted to to explain it.

In *Kinaston* v. *Clark*, 2 Atkins, 205, Lord Hardwicke said, there are many cases where the enacting part of a statute extends further than the preamble.

In the preamble of this Act it is recited, that societies have been established for assisting the members thereof in obtaining a small freehold or leasehold property, and that it is expedient to afford encouragement and protection to such societies, thereby meaning societies of a like nature or kind; but even if the preamble will not bear so extensive a meaning, the words used in the enacting part are clear and unambiguous, and require no resort to be made to the preamble to explain their meaning; and, as real estate includes copyhold as well as freehold, by applying the above rules of construction to the point in question, it would seem clear that societies may be established for enabling members to purchase or build on copyhold property.

A society may lend its funds to any of its members on mortgage

The question whether a society can legally advance to any member the amount or value of his share or shares for any other purposes than those mentioned in this section, namely, to erect or purchase one or more dwelling-house or dwelling-houses, or other real or leasehold estate, is not now of much practical importance; for in the case of *Cutbill* v. *Kingdom*, *supra*, where by the rules of a benefit building society, provision was made for lending money

to members on mortgage security, Pollock, C.B., said, "It is conceded that the society might lend money to persons not members, and I have looked into the Act of Parliament to see whether it contains any provision excluding loans to members; but I find none. If, then, the society may lend to strangers, I see no reason why they should not lend to any of their own body; on the contrary, it is quite within the scope of the society." And in the case of *Morrison* v. *Glover, supra*, it was held that a benefit building society may lend money upon mortgage security to one of its members, and that such security would be within the 21st section of 10 Geo. 4, c. 56, and therefore vest in the trustees or treasurer for the time being.

No transaction between any member and the society usurious.

It was decided in *Carr* v. *Johnson*, (reported in the 11th volume of the *Law Times*, p. 356,) by the Court of Exchequer, that the fines reserved in a mortgage security made to a benefit building society for non-payment of contributions, &c., did not make the transaction usurious; but it had before that been decided in *Silver* v. *Barnes*, 6 Bing. N.C. 180, that an advance to a member of an unenrolled friendly society, at interest exceeding £5 per cent. was not an usurious transaction, as being merely an advance of partnership funds in which the former was interested in common with the other members of the society.

The provisions of the 10 G. 4,

By the 4th section, all the provisions of the 10 G. 4, c. 56, and 4 & 5 W. 4, c. 40, so far

c. 56, and 4 & 5 W. 4, c. 40, and the 12th section of the 9 & 10 Vict. c. 27, applies to the Act.

as the same, or any part of them, are applicable to benefit building societies, are extended to them; and all the clauses in the first-mentioned Act, except the 2nd, 30th, 31st, 34th, 35th, and 36th sections, and in the last-mentioned Act, except the 2nd, 6th, 9th, and 11th sections, seem applicable to the purposes of these societies. By the 22nd section of the 9 & 10 Vict. c. 27, an Act to amend the Laws relating to Friendly Societies, it is enacted, that that Act shall be construed with and as part of the 10 G. 4, and 4 & 5 W. 4, c. 40. This, however, does not make any of the clauses in that Act, except the 12th (which extends to the rules of any society established under the 10 G. 4, c. 56, *or to which the provisions of that Act* had been extended), applicable to the Building Societies Act. The legislature, to save the trouble of incorporating the 10 G. 4, c. 56, and 4 & 5 W. 4, c. 40, with the 6 & 7 W. 4, c. 32, in direct terms, did so by relation; and the provisions of the two former statutes are made part of the latter statute as much as if they were expressly incorporated. The 4th section gave the same effect to the Building Societies Act, as if it actually contained the clauses in the Friendly Societies Acts passed previously. If the clauses in the former Acts had been *in terms repeated* and re-enacted in the Building Societies Act, it is clear that the 22nd section of the 9 & 10 Vict. c. 27, would not have extended the provisions of that Act to the 6 & 7 W. 4, c. 32, it not being mentioned therein. The case of *R.* v.

The Inhabitants of Merionethshire, seems an authority on this point. The 18 G. 3, c. 73, s. 64, empowered the court trying an indictment for the non-repair of a highway, to award costs. The 49 G. 3, c. 59, s. 1, enacted, "that all matters and things in the said Act contained relating to highways, should, so far as applicable, be extended to county bridges as fully and effectually as if the same and every part thereof were herein repeated and re-enacted:" and it was held, that the clause as to costs in the 13 G. 3, c. 78, was substantially re-enacted in the 43 G. 3, c. 59, and therefore, was not repealed when the 5 & 6 W. 4, c. 40, repealed in general terms the 13 G. 3, c. 78. A similar point arose in the late case of *Walker* v. *Giles*, 6 C. B. Rep. 662 (*infra*, p. 44). The 3 & 4 Vict. c. 73, which, reciting the 37th section of the 10 Geo. 4, c. 56, enacted that nothing in that Act contained should exempt from stamp duty any friendly society, where the sum assured should exceed the sum of 200*l.*; and it was contended that the incorporation of the 37th section of the Friendly Societies Act into the Building Societies Act, must, at all events, be taken with the qualification introduced by the 3 & 4 Vict. c. 73: it was held, however, that this was not the case; and that the exemption in the 10 G. 4, c. 56, s. 37, was by the 6 & 7 W. 4, c. 32, s. 4, incorporated in the latter Act, as if it had been therein specially re-enacted, which would not have been the case if it were to be held to be

abrogated by the passing of a subsequent Act having no such object in view.

Investment of the funds.

The trustees of a building society may, as has been before mentioned, lay out any of the funds on mortgage or government security, or the public stocks or funds under the 13th section of the 10 G. 4, c. 56; but this section seems to apply only to such parts of the fund as the exigencies of the society shall not call for immediate application thereof.

Conveyance of property when trustee is absent, &c.

Under the 15th section of the 10 G. 4, c. 56, the court of equity may appoint a person to convey the lands of the society to the new trustee appointed in the place of a trustee, out of the jurisdiction of the court, or refusing to convey the lands, &c.: and it has been held, that if a society proceed under the authority of this section, they need not serve the trustee declining to convey with the petition; and, if they do so, they must pay his costs: *see In re Third Burnt Tree Building Society*, 16 Sim. 297. This section, however, in requiring a conveyance from a retiring trustee, seems rather inconsistent with the 21st section hereafter referred to, which vests all the lands, &c. of the society in the trustees for the time being without any conveyance.

Vesting property in the treasurer or trustees for the time being.

Under the 21st section of the 10 G. 4, c. 56, all the real and personal property of the society is vested in the treasurer or trustee thereof for the time being; and on the death *or removal* of any treasurer or trustee, vests in the succeeding

treasurer or trustee without any conveyance. It was so held in *Walker* v. *Giles, supra,* where Maule, J., said, "the effect of the 21st section of the 10 G. 4, c. 56, is to make the continuing and the new trustees joint-tenants: it operates as a new appointment of all;" and in the before mentioned case of *Morrison* v. *Glover,* it was held, that the trustees for the time being of a society might sue, although the declaration showed they were not the covenantees, and no assignment to them was stated, as the statute rendered any assignment unnecessary, and that a mortgage security taken in the name of the trustee or trustees vested in the succeeding trustee or trustees. In a recent case, *R.* v. *Cain,* 1 Car. & M. 309, it was held, on an indictment, that the property of the society was properly laid in the treasurer. The property vests only in the new trustee on the death or *removal of an old trustee; whenever, therefore, a trustee resigns, or is displaced,* in any other way than by death, the society should *remove* him by a resolution.

Disputes between the society and the member as such must be referred to arbitration.

By the 27th section of the 10 Geo. 4, c. 56, the rules must direct how matters in dispute are to be settled, whether by justices or arbitration. This direction has the effect of excluding the jurisdiction of the superior courts, as was decided in the case of *Crisp* v. *Bunbury,* 8 Bing. 394; and *Timms* v. *Williams,* 2 Q. B. Rep. 413. In the recent case of *Payne, Ex parte,* 5 Dowl. & L. 679 (*infra,* p. 82), where, by the rules of a building society, it was provided that all mat-

ters in dispute should be referred to justices in pursuance of the provisions of the 10 G. 4, c. 56, s. 27, it was held, on motion for a *mandamus* to the judge of one of the county courts, to proceed and hear a plaint levied by one of the members, against the officer of the society, that the section of the Act and the rules providing for a cheap, simple, and speedy decision, ousted the jurisdiction of the ordinary tribunals. The words "matter in dispute" refer to matters in difference between the society and the members as such, and not in any other capacity; and where some of the grounds of dispute are of that nature, and others not, then the 27th section does not apply. These points were decided in the late case of *Morrison* v. *Glover*, *supra*, where the defendant, having mortgaged some leasehold premises to the society, and thereby covenanted to observe the rules, and also to pay certain rents due to the superior landlord, was sued for breaches of both these covenants; and it was held, that although, so far as regarding the breach in the non-observance of the rules, the matter in dispute might be one between the society and the defendant in the character of a member, yet that, so far as concerned the breaches for non-payment of the rents, it was clearly not a matter between the defendant as a member of the society and the society, but merely between the defendant and the society as a mortgagor, and therefore, a plea that the claims and demands of the plaintiff were matters in dispute between the society and the defendant, within

But not disputes between him and the society as mortgagor and mortgagee.

the meaning of the rules, was held bad. The court further said, that the words "matter in dispute" must be read, "matter in difference between the society and the members as members, and not in any other capacity." And in *Cutbill* v. *Kingdom, supra*, where the trustees brought an action against a member for the amount of his subscriptions, fines, and other payments secured by the mortgage deed: it was held, they might do so, notwithstanding the rules provided for the reference of all disputes to arbitration. In the recent case of *Harmer* v. *Gooding*, 13 *Jur.* 400 (*infra*, p. 33), where certain members of a building society who had given notice to redeem, filed a bill on behalf of themselves and all other members, against the directors, for an account, &c., and dissolution of the society, although the point was taken that the matter in dispute was one which ought, according to the rules, to be referred to arbitration, yet the bill was dismissed on another ground, namely, as being defective for want of parties,—implying, therefore, that the clause as to arbitration had no reference to the dispute in question.

The award is final.

The Act declares that the award shall be final, but only if made according to the true purport and meaning of the rules of the society; and by the 7th section of the 4 & 5 W. 4, c. 40, jurisdiction is given to justices of the peace, in case of neglect or refusal by the arbitrators to make an award. In the recent case of *R.* v. *Grant*,

reported in 13 Jur. 1027, and 19 Law J. Rep. N. S. 62 (*infra*, p. 57), where, by the rules of a friendly society, it was declared, that all matters in dispute should be referred to arbitrators, who were to hear evidence on both sides; it was decided that, as the arbitrators had refused to hear evidence on the part of the member, the award by them was not made according to the true meaning of the rules, and therefore not final and binding within the 10 G. 4, c. 56, s. 27; and that the 4 & 5 W. 4, c. 40, s. 7, giving jurisdiction to justices in case of the neglect or refusal of the arbitrators to make an award, intends an award final and binding within the meaning of the 10 G. 4, c. 56; and that, therefore, the justices had power to make an order upon the matter in dispute.

Mortgages to society free from stamp duty.

By section 37 of the 10 G. 4, c. 56, bonds and other securities and assurances given to or on account of any friendly society, and any instrument or document required or authorised to be given or made to or by any friendly society, are expressly exempted from any stamp duty whatever; and by the combined operation of this clause and the 4th section of the Building Societies Act, all mortgages made to the trustees of benefit building societies are freed from stamp duty. This, at first, was considered doubtful, in consequence of the express exemption from stamp duties contained in the 8th section of the Building Societies Act, which enacts, that no rules of any society, nor any copy

thereof, nor any transfer of any shares, shall be liable to stamp duty. But the recent case of *Walker* v. *Giles, supra*, has removed all doubts upon the subject. The point arose in an action of replevin, where the deed in question was produced in support of an alleged demise. The deed purported to be a mortgage by demise of leaseholds to the trustees of a building society, with an agreement by the mortgagors thenceforth to become tenants at will of the trustees at a yearly rent. The deed had a 5*l.* stamp; the proper *ad valorem* stamp for the amount advanced; and its admissibility was objected to, because it bore no lease stamp in addition; and the court held, that, reading the 37th section of the 10 G. 4, c. 56, as incorporated into the 6 & 7 W. 4, c. 32, so far as applicable, it exempted from stamp duty all securities given for the purpose of carrying the last-mentioned Act into effect; and that the unappropriated stamp of 5*l.* was sufficient for the deed if it operated as a lease; and further, that the 3 & 4 Vict. c. 73, limiting the exemption previously given to friendly societies under the 10 Geo. 4, c. 56, did not affect the Building Societies Act, which was an independent statute. In the case of *Barnard* v. *Pilsworth*, 6 *Com. Bench Rep.* 698, n. (*a*), (*infra*, p. 52), the decision in *Walker* v. *Giles* was confirmed. The result now is, that upon mortgages to building societies in respect of advances made upon shares, no stamp whatever is necessary, however large the sum secured.

The rules binding from date of certificate.

The rules are, by the 4 & 5 W. 4, c. 40, s. 4, declared to be binding on the members, and to take effect from the date of the registrar's certificate; and it was so held in the case of *Bradburne* v. *Whitbread*, reported in 7 *Jur.* 629.

Proof of the rules.

By the 4th section of the 10th Geo. 4, c. 56, the rules of a society are to be deposited with the clerk of the peace, and to be confirmed by the justices; and sect. 8 enacts that all rules when confirmed shall be entered in a book, and that the entry thereof, or the transcript thereof, deposited with the clerk of the peace, or a true copy thereof examined, &c., shall be received as evidence of such rules in all cases; but the 12th sect. of 9 & 10 Vict. c. 27, repeals so much of that Act as required that a transcript of the rules of any society established under that Act, *or to which the provisions of that Act have been extended*, should be filed with the clerk of the peace, and confirmed by the justices; and enacts "that all transcripts of such rules now filed shall be taken off the file, and returned to the registrar of friendly societies," and that he is to keep one of the transcripts of all certified rules, and all the transcripts of rules so returned to him. In the before-mentioned case of *Walker* v. *Giles*, the only proof of the rules was by the production of the printed book used by the society, at the end of which was the certificate of the barrister, and proof of his handwriting; and it was objected that the rules were not properly proved, inasmuch as they

did not come from the proper custody, and there was no proof that they had been enrolled at the sessions, pursuant to the 10th Geo. 4, c. 56, s. 4. There was not any necessity to come to a decision on this point; but it would seem clear that the 8th section makes the book evidence without more, and that the 12th section of the 9th and 10th Vict. c. 27, in terms substitutes the new place of deposit for the rules, not only in cases of societies established under 10th Geo. 4, c. 56, but also in cases of all societies to which the provisions of that Act *have been extended and made applicable*, which clearly embraces those formed under the Benefit Building Societies Act.

Redemption of mortgaged premises by member.

A very important question lately arose as to the terms upon which a member of a building society may redeem his mortgage. In *Mosley* v. *Baker*, 6 *Hare*, 97 (*infra*, p. 62), a bill was filed to redeem certain property conveyed to the trustees of the Equitable Provident Association and Savings Fund. It appeared that the plaintiff became a member and purchased some shares in the society, and, in consideration of an advance in respect of the shares, executed a mortgage to the trustees. By the rules 10*s*. per month subscription, and 4*s*. per month redemption monies, were payable on each share, until a sum of £120 per share should be realized for non-purchasing members; and by the 62d rule, a member might redeem on giving notice, and the directors were to allow

such member the profits of his share or shares, made up to the time, and to make a deduction of such profits, and of the amount of the subscriptions paid by him, from the full amount expressed in and secured by the mortgage. The mortgage was made in the usual form, upon trust for sale, if default was made, in payment of the subscription monies, &c.; and declared "that out of the sale monies were to be retained all such subscriptions and such payments as should be then and should thereafter become due in respect of the shares, calculating the probable duration of the society, it being agreed that, in case of a sale, all monies which should at any time afterwards become due, in respect of the shares, should be considered as due at the time of the sale, and be deducted and paid out of the monies received, and the amount calculated accordingly;" and it was held that, upon the terms of the mortgage deed, and the rules of the society, the plaintiff was entitled to redeem only upon payment of all future monthly subscriptions and redemption monies on his shares until the termination of the society, and that the probable duration of the society was to be ascertained by calculation, and the future payments to be treated as if immediately due. See further on this point *infra*, p. 84.

The mortgage deed should not contain a clause making member

It has hitherto been the usual practice in mortgages made to building societies to insert an agreement by the member to become tenant at will henceforth to the trustees, at a yearly rent,

subject to the usual covenants and remedies as in leases, and with the usual proviso authorizing the mortgagor to retain possession until default, &c. This was deemed to give a further security for the payment of the contributions, and no doubt was entertained as to its efficacy; and in the 5th volume of *Jarman's Conveyancing*, p. 528, it is said, "It often is convenient in mortgages to give a power of distress for the recovery of the interest, particularly where the property is in the occupation of the mortgagor himself, and not of a tenant paying the rent. The object is sometimes effected by making a demise at will to the mortgagor, reserving a rent equal to the amount of the interest:" but in the late case of *Walker* v. *Giles*, *supra*, decided by the judges of the Common Pleas, it was held that the object and general contents of the mortgage deed were inconsistent with the intention of creating the relation of landlord and tenant; and that, as the member was to retain possession until default, it was quite inconsistent that immediately before default he should become tenant at a yearly rent, and so be deemed to have contracted to pay the contributions, and also the rent; a construction, they said, manifestly contrary to the obvious intention of the parties. In the recent case of *Doe d. Bastow* v. *Cox*, 11 Q. B. Rep., 123 (*infra*, p. 74), the mortgage deed contained the same clause, but no objection was taken as to its inconsistency; and the case was decided on the point whether the clause operated to make the

tenant at will to the trustees.

member tenant at will or from year to year. The same point, we believe, will shortly come again before the court; but, in the meantime, it will be better to insert merely a power of distress, of the validity of which no doubt can be entertained, and such a power is at all events to be preferred, inasmuch as a tenancy at will is liable to be determined by the death and at the will of either party, and a clause creating such a tenancy subjects the deed to a lease stamp; not the case, however, with a power of distress.

Right of member to be registered as a county voter.

Unless the annual value of the freehold premises mortgaged by a member to the building society amounts to the sum of 40*s.* per annum above the monthly payments secured by the deed, he is not entitled as mortgagor in possession to be registered as a county voter under the 6 & 7 Vict. c. 18, s. 74; this was decided in the case of *Copland, app.*, and *Bartlett, resp.*, 6 *C. B. Rep.*, 662 (*infra*, p. 75). In that case, a member of a building society subscribed for one share, and, in consideration of an advance in respect thereof, mortgaged to the society freehold land to secure the monthly payment of 15*s.* becoming due upon his share. The annual value of the premises was 8*l.* The member was in possession; but the monthly payments amounted to 9*l.* per annum. The revising barrister erased his name from the list of county voters; and, on appeal to the court of Common Pleas, his decision was confirmed, and it was held that the monthly payments

secured by the mortgage deed to the society were "a charge on the estate," within the 8th Henry 6, c. 7.

In a suit by withdrawing members for a dissolution of the Society the non-withdrawing members must be represented.

The last point we have to consider in connection with Benefit Building Societies arose in *Harmer* v. *Gooding*, 13 *Jurist*, 400, which was the case of a bill filed by three members, who had given notice according to the rules of their intention to withdraw their shares on behalf of themselves and all the other members of a Building Society except the defendants, against the directors for the dissolution of the society. Some of the members had not given notice of withdrawal, and the bill did not state that their names were unknown, but merely that the number of them was very great; and it was held that the bill was defective for want of parties, as neither the plaintiff nor the defendants (they all being directors) effectually represented the non-withdrawing members, their names not being stated in the Bill to be unknown to the plaintiffs.

6 & 7 Will. 4, Cap. 32.

AN ACT FOR THE REGULATION OF BENEFIT BUILDING SOCIETIES. [14*th July*, 1836.]

Whereas certain societies commonly called Building Societies have been established in different parts of the kingdom, principally amongst the industrious classes, for the purpose of raising by small periodical subscriptions a fund to assist the members thereof in obtaining a small freehold or leasehold property, and it is expedient to afford encouragement and protection to such societies and the property obtained therewith: Be it therefore enacted, by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritnal and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same,

Societies may be established for the purchase or erection of dwelling houses or other real or leasehold estate.

That it shall and may be lawful for any number of persons in *Great Britain* and *Ireland* to form themselves into and establish societies for the purpose of raising, by the monthly or other subscriptions of the several members of such societies, shares not exceeding the value of one hundred and fifty pounds for each share, such

subscriptions not to exceed in the whole twenty shillings per month for each share, a stock or fund for the purpose of enabling each member thereof to receive out of the funds of such society the amount or value of his or her share or shares therein, to erect or purchase one or more dwelling house or dwelling houses, or other real or leasehold estate to be secured by way of mortgage to such society until the amount or value of his or her shares shall have been fully repaid to such society with the interest thereon, and all fines or other payments incurred in respect thereof; and to and for the several members of each society from time to time to assemble together, and to make, ordain, and constitute such proper and wholesome rules and regulations for the government and guidance of the same as to the major part of the members of such society so assembled together shall seem meet, so as such rules shall not be repugnant to the express provisions of this Act and to the general laws of the realm, and to impose and to inflict such reasonable fines, penalties, and forfeitures upon the several members of any such society who shall offend against any such rules, as the members may think fit, to be respectively paid to such uses for the benefit of such society as such society by such rules shall direct; and also from time to time to alter and amend such rules as occasion shall require, or annul or repeal the same, and to make new rules in lieu thereof, under such restrictions as are in this Act contained; pro-

Members may make rules,

and amend them.

No member to receive from the funds any interest or dividend upon any share until the value per share has been realized or member withdraws.

vided that no member shall receive or be entitled to receive from the funds of such society any interest or dividend, by way of annual or other periodical profit upon any shares in such society, until the amount or value of his or her share shall have been realized, except on the withdrawal of such member, according to the rules of such society then in force.

The receiving from a member any bonus for an advance, or any interest, not to be deemed usurious.

II. And be it enacted, That it shall and may be lawful to and for any such society to have and receive from any member or members thereof any sum or sums of money, by way of bonus on any share or shares, for the privilege of receiving the same in advance prior to the same being realized, and also any interest for the share or shares so received or any part thereof, without being subject or liable on account thereof to any of the forfeitures or penalties imposed by any Act or Acts of parliament relating to usury.

Rules may be made to provide forms of conveyance, &c.

III. And be it further enacted, That it shall and may be lawful to and for any such society, in and by the rules thereof, to describe the form or forms of conveyance, mortgage, transfer, agreement, bond, or other instrument which may be necessary for carrying the purposes of the said society into execution; and which shall be specified and set forth in a schedule to be annexed to the rules of such society, and duly certified and deposited as herein-after provided.

IV. And be it further enacted, That all the provisions of a certain Act made and passed in the tenth year of the reign of his late Majesty King *George* the Fourth, intituled *An Act to consolidate and amend the Laws relating to Friendly Societies*, and also the provisions of a certain other Act made and passed in the fourth and fifth years of the reign of his present Majesty King *William* the Fourth, intituled *An Act to amend an Act of the tenth year of his late Majesty King* George *the Fourth, to consolidate and amend the Laws relating to Friendly Societies*, so far as the same, or any part thereof, may be applicable to the purpose of any Benefit Building Society, and to the framing, certifying, enrolling, and altering the rules thereof, shall extend and apply to such Benefit Building Society and the rules thereof in such and the same manner as if the provisions of the said Acts had been herein expressly re-enacted.

Provisions of Friendly Society Acts of 10 Geo. 4. c. 56, and 4 & 5 W. 4. c. 40, extended to this Act.

V. And be it further enacted, That it shall be lawful for the trustees named in any mortgage made on behalf of such societies, or the survivor or survivors of them, or for the trustees for the time being, to endorse upon any mortgage or further charge given by any member of such society to the trustees thereof, for monies advanced by such society to any member thereof, a receipt for all monies intended to be secured by such mortgage or further charge, which shall be sufficient to vacate the same,

Receipt endorsed on mortgage to be sufficient discharge without reconveyance.

and vest the estate of and in the property comprised in such security in the person or persons for the time being entitled to the equity of redemption, without it being necessary for the trustees of any such society to give any reconveyance of the property so mortgaged, which receipt shall be specified in a schedule to be annexed to the rules of such society, duly certified and deposited as aforesaid.

Not to authorize investment of funds in savings bank.

VI. Provided always, and be it further enacted, That nothing herein contained shall authorize any Benefit Building Society to invest its funds, or any part thereof, in any savings bank, or with the commissioners for the reduction of the National Debt.

Benefit of Act to extend to all societies established prior to June 1836.

VII. And be it further enacted, That all Building Societies established prior to the first day of *June*, one thousand eight hundred and thirty-six, shall be entitled to the protection and benefits of this Act, on their present rules being duly certified and deposited as directed by the said recited Acts; and no such society shall be entitled to the benefits of this Act until their rules shall have been so certified and deposited; and that no such society shall be required to alter in any manner the rules under which they are now respectively governed.

Exemption from stamp duties.

VIII. And be it further enacted, That no rules of any such society, or any copy thereof, nor any transfer of any share or shares in any

such society, shall be subject or liable to or charged with any stamp duty or duties whatsoever.

IX. And be it further enacted, That this Act shall be deemed a public Act, and shall extend to *Great Britain*, *Ireland*, and *Berwick-upon-Tweed*, and be judicially taken notice of as such by all judges, justices, and other persons whatsoever, without the same being specially shown or pleaded. Public Act.

APPENDIX.

NOTE to p. 8.

DOBINSON *v.* HAWKS, 16 Simons, 407; 12 Jurist, 1040.
20th November, 1848.

A Joint Stock Company cannot hold shares in a Benefit Building Society.

The bill was filed by the trustees of a joint-stock brewery company, to redeem a mortgage made by the company to the trustees of a benefit building society.

The mortgage deed was in the ordinary form, and, accordingly, the counsel for the plaintiffs insisted that their clients were entitled to redeem upon the usual terms. But the defendant's counsel alleged that the plaintiffs, in order to obtain the loan, became shareholders in the building society, and therefore, they were not entitled to redeem without regard to the liabilities which they had incurred as such shareholders.

The *Vice Chancellor*:—In order to support the defendant's view of the case, it must first of all be made to appear plainly, that the plaintiffs were members of the building society. I think that, attending to what plainly appears to be the policy of the Act of parliament, and the object of the society as expressed in its rules, it would have been a fraud on the Act of parlia-

ment under which the building society was constituted, and a violation of the rules by which it is regulated, to have made them members. It is quite plain that the society was meant by the legislature to be constituted for the benefit of industrious individuals, who might be hoping to make some progress in life, by laying out small sums to be contributed through the medium of the society in the purchase of buildings, in the purchase of land, or in the erection of buildings. There is a little degree of obscurity in the wording of the first section of the Act, for it is perfectly plain that, when the legislature said, that the object was to erect or purchase one or more dwelling house or houses, or other real or leasehold estates, they meant, to erect houses, or purchase estates of small value.

Now then, what is the case? Here is a company, established for quite a different purpose, that, for its own purposes, wishes to borrow money; and the arrangement made by the defendants, was that the money should be advanced on the same footing as if those persons who constituted the brewery company were actually members of the building society. I have looked over all the rules, and the conclusion which I have come to is, that there is nothing whatever which countenances the supposition that persons jointly might be shareholders. The expression is uniformly "his or her;" and it seems to me that it is inconsistent with the object which the legislature contemplated (which was to assist individuals), that persons combining together and forming a joint-stock company should ever be capable of being members of a benefit building society.

The consequence is, that the case set up by the defendants having totally failed, the accounts must be taken in the usual way; and the defendants must pay the costs of the suit up to the hearing.

NOTE to p. 8.

CUTBILL *v.* KINGDOM, 1 Exch. Rep. 494; 17 Law J. Rep. (N.S.) Exch. 177.

A benefit building society established under the provisions of the 6 *&* 7 *Will.* 4, *c.* 32, *is not precluded from lending money on mortgage to its own members.*

One of the certified rules of such society provided, that no action should be brought or defended until the approbation of a majority of members present at "a special meeting" of the society should be obtained;— Held no objection that the approbation of the majority was obtained at "a special general meeting."

Another rule provided, that a committee should determine all disputes which should arise respecting the construction of the rules of the society, or any of the clauses, matters, or things therein contained, and also of any additions, alterations, or amendments which should or might thereafter arise between the trustees, officers, and other members of the said society;— Held, that the trustees might, notwithstanding, bring an action against a member for the amount of his subscriptions and fines.

Semble, that, under the 6 *&* 7 *Will.* 4, *for the regulation of benefit building societies, the legislature intended that no one member should acquire a larger interest than* 150*l. in respect of his share or shares in such society.*

This was an action on covenant. It appeared that the plaintiffs were the trustees of a building society called "The Metropolitan Building Association," and that the defendant was a member and a holder of

twenty-nine shares in the society. The certified rules and regulations of the society were given in evidence, and it appeared that the present action was brought with the approbation of a majority of members present at a "special general meeting" of the society. On the part of the defendant, it was submitted that the verdict ought to be found for him; first, because the objects of the society were not confined to the purposes mentioned in the Act for the Regulation of Benefit Building Societies, 6 & 7 Will. 4, c. 32, but extended to loans to members on mortgage securities; secondly, that the action was not brought with the approbation of the majority of members present at a "special meeting" as required by the third rule; thirdly, that the proper mode of proceeding was by reference to arbitration under the twenty-eighth rule. The learned judge overruled the objections, and directed a verdict for the plaintiffs.

J. Brown moved for a rule *nisi* to set aside the verdict, and for a new trial, on the ground of misdirection. The certified "Rules and Regulations" show that the purposes of the society are not limited to those mentioned in the 6 & 7 Will. 4, c. 32, for the regulation of benefit building societies. Though one of the objects of the association is to enable members to receive out of the funds of the society the amount of his shares to erect or purchase houses or land, yet another object is to lend money to members on mortgage without regard to the purpose to which it may be applied. Such an object was never contemplated by the statutes. The eighth rule provides, "that so often as the funds of the association shall amount to a share of 120*l.* the share shall be awarded to the highest bidder, who shall have the privilege of taking as many additional shares at the same rate as

he may choose." (*Parke*, B.—The intention of the legislature was not to allow any one member to acquire a larger interest than 150*l.* in respect of his share or shares. But that objection does not seem to have been taken at the trial.) These societies are exempt from the penalties of usury, and also from the charges of stamp duty; but the legislature could never have intended that these exemptions should apply to loans to members at usurious interest. If so, a person who wished to borrow money on mortgage might avoid the payment of stamp duty by becoming a member of one of these societies. (*Parke*, B.—There is no usury in benefit societies lending to their members money at more than 5*l.* per cent. *Silver* v. *Barnes*, 6 Bing. N.C. 180.)

Though a meeting was held, and the approbation of the majority of the members then present, obtained before the action was commenced, yet the meeting was not a special meeting, as required by the rule, but a "special general meeting." (*Alderson*, B.—The meaning of a special meeting is, that the meeting shall not be convened, unless the parties have notice of the purpose of the meeting. A meeting may be both general and special—general for the purpose of doing general business, and special for a particular purpose; then it becomes a special general meeting. *Rolfe*, B.—A special general meeting is both special and general.)

Crisp. v. *Bunbury* decided, that since the 9 Geo. 4, c. 92, an action will not lie against the trustees of a benefit society, and that in the case of dispute, the only mode of procedure is by arbitration. This case differs from that of a private agreement to refer, since these rules are made under and have the force of an Act of Parliament. The 6 & 7 Will. 4, c. 32, incorporates the provisions of the Friendly Societies' Act,

10 Geo. 4, c. 56, the 27th section of which requires the rules of every such society to provide for reference of disputes to arbitration. (*Parke*, B.—This rule contains no provision for enforcing the award in case of non-payment of the money.)

Pollock, C. B.:—There ought to be no rule. The objection taken was, that the society could not lend money on mortgage to its own members. It is conceded that the society might lend money to persons not members, and I have looked into the Act of Parliament to see whether it contains any provision excluding loans to members, but I find none. If, then, the society may lend to strangers, I see no reason why they should not lend to any of their own body; on the contrary, it is quite within the scope of the society. With respect to the second objection, the answer has been already given by my brother Alderson. By a special meeting is meant a meeting for those matters of which the parties have had special notice. Here they had notice of the purpose of the meeting, which was held for that, and also for other purposes. As to the last objection, the 28th rule does not make it imperative to refer a matter of this kind to arbitration. That rule applies only to differences in respect of the construction of the rule, or any additions, alterations, or amendments therein.

Parke, B.:—I agree with the Lord Chief Baron. There is nothing in the Act of Parliament to prevent the society from purchasing from its members the fee simple of an estate; then why may they not take a mortgage of the estate? With respect to the question as to the number of shares that any one member may hold, that point does not appear to have been taken at the trial, and therefore does not arise now. As to the second objection, the answer has been already given.

With respect to the last, the 28th rule applies only to disputes respecting the construction of the rules; and an action on a covenant is not a matter in dispute to be referred in pursuance of that rule.

Alderson, B. :—I am of the same opinion.

NOTE to p. 9.

MORRISON *v.* GLOVER, 19 Law J. Rep. (N.S.) Exch. 20.—21 Nov. 1849.

A rule of a building society which requires that all disputes, which may arise between the society and any member thereof, shall be referred to arbitration, pursuant to 10 *Geo.* 4, *c.* 56, *s.* 27, *relates only to disputes between the society and a member as member. Therefore, where the trustees of a building society lent money on a mortgage of leasehold property to one of the members, who covenanted to observe and fulfil the rules of the society, and also to pay certain rent due to the superior landlord, and the trustees sued for breaches of both these covenants, a plea that the claims and demands of the plaintiffs were matters in dispute between the society and the defendant, within the meaning of the rules, was held bad.*

A building society may lend money upon mortgage security to one of its own members, and such security will be within the 21*st section of* 10 *Geo.* 4, *c.* 56, *and therefore vested in the trustees or treasurer for the time being.*

A declaration upon such deed by the trustees for the time being, need not negative that there is a treasurer.

The rules of the society provided for the transfer in certain cases of securities taken by the trustees of the

society to other trustees. Held, that a declaration in covenant, stating that the plaintiffs were trustees for the time being and sued as such trustees, was good on general demurrer, although it showed they were not the covenantees, and no assignment to them was stated.

A member of a building society may hold shares exceeding £150 in value.

This was an action on covenant. It appeared that the plaintiffs were trustees of the Paddington Mutual Association, and that the defendant was a member thereof, and had executed a mortgage to the trustees of certain leasehold property, to secure the money advanced to him; and he thereby covenanted to observe the rules of the society, and pay the rent and perform the covenants contained in the lease. The declaration stated that the plaintiffs at the time of the commencement of the suit were and still are the trustees of the society. The defendant pleaded first, that the cause of action ought to have been referred to arbitration, pursuant to the rules; secondly, that the covenantees were not the parties suing, and their estate had not been properly described; and thirdly, that the advance was not made for the purpose of enabling the defendant to erect or purchase one or more dwelling house, &c., but was made on the security of the leasehold estate he already possessed.

Joyce in support of the pleas.—Looking at the object of these statutes, which is to benefit the poor and prevent the waste of the funds in litigation, the compulsory arbitration is an essential part of the constitution of these societies. *Crisp* v. *Bunbury*. In *Ex parte Payne*, it was held that all disputes between the society and the members must be so referred.

Parke, B.:—Here there is a covenant to pay the

rent. How can that be a dispute between the defendant and the society? Your argument may be correct as to the subscriptions, but if any one of the subjects does not fall within the scope of the rule, the plea is bad.

(*Alderson*, B.:—Suppose he had covenanted not to carry on a particular trade, so that no forfeiture to the superior landlord might occur, would not an action lie for the breach?)

The seventeenth plea is good in substance, for the declaration shows that the covenantees are not the parties suing, and their estate has not been properly divested. If the effect of section 21 is to transfer the securities in ordinary cases, it can only apply to transactions within the Act. For the purposes of arbitration it is not within section 21, and the covenantees ought to sue.

The last plea is good, because the plaintiffs, who sue as trustees, can only do so if this was a transaction within the scope of the society. The advance was not for the purposes of the building society.

The declaration is bad also, because it shows that the defendant had a larger interest than £150 in respect of one share. *Cutbill* v. *Kingdom*. (*Parke, B.*—What was there said on that point is incorrect.) The declaration ought to have shown what rule has vested the securities in the trustees rather than in the treasurer.

Pollock, C. B.:—The only point of doubt is, whether this, although a collateral matter, may not be within the obligation to refer. No doubt the result of *Crisp* v. *Bunbury*, is that we should give such effect to the language of statutes of this kind, which permit parties to enter into agreements as to references, as to include all disputes between the parties in the character of society and members. But the question is, whether

it may not include other matters, where, in fact, the defendant is a member. I think the declaration sufficiently shows the character of the plaintiffs, and that they may sue under the 21st section.

Parke, B.:—The other points are untenable. The seventeenth plea is that there has been no transfer to the plaintiffs. If that is any answer it should be made by way of traverse, but the statute seems to render any assignment unnecessary. There is nothing to show that there is a treasurer, and we cannot say that there is. *Cutbill* v. *Kingdom* also decides that the eighteenth plea is bad, for it is clear that the trustees may advance on mortgage to one of the members, and it is immaterial what property is so mortgaged.

Alderson, B.:—We cannot take notice of there being a treasurer, and probably the construction of the 21st section is, that securities taken in the name of the treasurer vest in his successors, and if taken in the name of the trustee or trustees, they vest in the succeeding trustee or trustees.

Rolfe, B. concurred.

The judgment of the court was now (Nov. 22) delivered by—

Pollock, C. B.:—The only point that remained for our consideration was, whether this was a matter in dispute between the society and one of its members, according to the true meaning of the rules established by the society, so as to be the subject matter of arbitration, or whether it might be made the subject of an action. It was contended, on the part of the defendant, that whatever questions arose between the society and its members, must be referred to arbitration; therefore the plea was a good plea in bar to the action, which set up the necessity of a reference to arbitration. The way in which it became material was this: some of the

grounds of the action were, undoubtedly, between the society and the defendant in the character of a member, and there may be strong reasons for saying that if the claim had been entirely confined to a right on the part of the plaintiff of that description, then the case which was referred to of *Crisp* v. *Bunbury* would apply, and the plea would be good, therefore the demurrer ought not to be allowed, and the defendant would be entitled to judgment. But it is clear that some of the breaches relied upon by the plaintiffs,—for instance, a covenant to pay rent to Lord Cadogan,—were matters not between the defendant as a member of the society and the society; they were merely between the defendant and the society as a mortgagor. Now, we are of opinion, that if any other rule be established than that, the dispute must be with the party as member. If we go beyond that one step, the consequence would be that any extraneous matter of any sort that might happen to arise between the society and any of its members, having no connexion with the society, would become the subject-matter of reference. It appears to us, therefore, the words "matter in dispute" must be read, matter in difference between the society and the members as members, and not in any other capacity. That being our opinion on consideration, the plea which set up this necessity of the arbitration as a bar to the whole question raised by the plaintiffs, part of which clearly was not between the society and the defendant as a member, if the rest was, is a bad plea. The demurrer, therefore, to the plea, must be allowed, and the plaintiffs will be entitled to judgment. We have abstained from expressing any opinion whether, if this had not been so, the particular case before the court was such as to fall within the doctrines in *Crisp* v. *Bunbury*; it may or may not be; and it is clear that

on the present record the plaintiffs are entitled to judgment.

NOTE to p. 13.

WALKER *v.* GILES, 6 C. B. Rep. 662, Mich. vacation, 1848.

Mortgages and other securities given to the trustees of building societies established under the 6 *&* 7 *Will.* 4, *c.* 82, *are exempt from stamp duty.*

By an indenture between A. and B., holders of shares in a benefit building society, and C. and D., trustees of the society, reciting amongst other things the formation of the society, that A. and B. were entitled to a certain sum out of the funds thereof in respect of their shares therein, and that for the security of all the payments to become due in respect of the said shares, A. and B. had agreed to execute the assurance thereby made, A. and B. conveyed certain premises to C. and D. as such trustees, upon trust to permit A. and B. to receive the rents until default in payment of their contributions, with a power to C. and D. and the trustees for the time being of the society to appoint a person to receive the rents in case of default, and a power of sale in the like event, &c. The deed also contained a clause whereby A. and B. agreed "to become tenants to the parties hereto of the second part, and the trustees for the time being of the society of the premises hereby demised, henceforth during their will, at the net yearly rent of 200*l.*, *payable on the usual quarter days."*

Held, that this indenture did not operate as a demise, so as to sustain an avowry alleging a tenancy under the trustees, at the yearly rent of 200*l.*, *the*

general scope of the deed being altogether inconsistent with such a construction, and that no conveyance was necessary on the appointment of a new trustee, the 21st section of the 10 *Geo.* 4, *c.* 56, *vesting the property of the society in the trustees for the time being.*

Quære, whether the rules of the society were properly proved by the production, from the custody of the trustees, of the book kept by the society, and containing a certificate by the barrister pursuant to the 10 *Geo.* 4, *c.* 56, *and* 4 *&* 5 *Will.* 4, *c.* 32.

This was an action of replevin. It appeared that the plaintiffs were members of the Third Temperance Benefit Building Association, and mortgaged some leasehold premises to the defendants as trustees of the society. The mortgage was made in the usual form, namely, in trust to permit mortgagors to receive the rents until default in payment of their contributions; and the deed concluded with the following clause:—"And the said (plaintiffs) do hereby agree to become tenants of the said parties hereto of the second part, and to the trustees for the time being of the said society, of the premises hereby demised henceforth during their will, at the yearly rent, &c." The deed was stamped with an *ad valorem* stamp of 5*l.* only.

The objection to the deed was, that inasmuch as in addition to the mortgage, it contained a re-demise of the premises, it ought to have had a lease stamp. The only proof of the rules was by the production of the printed rules used by the society, at the end of which was the barrister's certificate, with proof of his hand-writing; and it was objected that the rules were not properly proved, inasmuch as they did not come from the proper custody, and there was no proof that they had been enrolled pursuant to 10 Geo. 4, c. 56, s. 4.

It was further objected on the part of the plaintiff, that, assuming the rules to be properly proved, they did not establish a joint tenancy in the defendants, inasmuch as they did not become trustees of the society at the same time, one of the trustees to whom the mortgage was made having died, and no conveyance of the mortgaged property being then made, so as to vest it in the new trustee.

A verdict was found for the defendants, and a rule *nisi* was afterwards obtained to enter a verdict for the plaintiffs, pursuant to leave reserved.

J. Brown showed cause against the rule. He submitted first, that by the joint operations of the 10 Geo. 4, c. 56, s. 37, and the 6 & 7 Will. 4, c. 32, s. 4, no further stamp was necessary, and that the 3 & 4 Vict. c. 73, s. 1, did not apply to building societies; secondly, that the rules of the society were properly proved by the production of the book bearing the certificate of Mr. Pratt.

The 8th section of the 10 Geo. 4, c. 56, it is submitted, makes the book evidence, without more; and the 12th section of the 9 & 10 Vict. c. 27, in terms substitutes the new place of deposit for the rules, not only in the case of societies established under the 10 Geo. 4, c. 56, but in the case of all societies to which the provisions of that Act have been extended and made applicable, which clearly embraces those formed under the 6 & 7 W. 4, c. 32.

It will be contended on the other side, that the second avowry could not be sustained without showing a conveyance by Hawkins to Bottle. The answer to that, however, is found in the 21st section of the 10 Geo. 4, c. 56, which enacts "that all real and heritable property, money, goods, chattels, and effects

whatever, and all titles, securities for money, or other obligatory instruments, and evidences or muniments, and all other effects whatever, and all rights or claims belonging to or had by such society, shall be vested in the treasurer or trustee of such society for the time being, for the use and benefit of such society, and the respective members thereof, their respective executors or administrators, according to their respective claims and interests, and after the death or removal of any treasurer or trustee, shall vest in the succeeding treasurer or trustee, for the same estate and interest as the former treasurer or trustee had therein, and subject to the same trusts, without any assignment or conveyance whatever, except the transfer of stocks and securities in the public funds of Great Britain and Ireland," &c. If, therefore, this were a security given to the treasurer or trustee of a friendly society, it clearly would pass to a succeeding trustee, without any transfer. (*Maule*, J.—The effect of the 21st section of 10 Geo. 4, c. 56, as it seems to me, is to make the continuing and the new trustees joint tenants. It operates as a new appointment of all.)

Channell, Serjt., and *Hawkins*, in support of the rule, contended that the effect of that deed was to create a mortgage security for the contributions payable by Leaver and Gore, in respect of their shares in the books of the society, to the extent of 840*l.* in the whole, with power to the trustees to enforce such contributions by appointing to receive the rents, or by sale of the mortgaged premises. The proviso at the end clearly does not operate as a present demise. There are no apt words to point to any such intention. The deed is clearly inconsistent with an absolute tenancy at 200*l.* a year.

Supposing a deed to operate as a lease, a lease stamp was necessary. Leases clearly are not within the contemplation of the Friendly Societies' Act, 10 Geo. 4, c. 56, s. 37. Possibly a mortgage might be a "security for money," which the trustees would be authorized to take by s. 21; but there is no provision in that or any of the subsequent Acts, authorizing them to lease property.

To make those rules binding upon the society, it was essential that they should be enrolled at the sessions. The certificate of the registrar under the 12th section of the 9 & 10 Vict. c. 27, is not enough to make the transcript evidence under the Building Societies' Act, 6 & 7 Will. 4, c. 32.

Wilde, C. J.—It is unnecessary to advert to some of the points that have been discussed in this case. Four questions, however, remain for our determination. The first that I shall consider is, whether the deed of the 25th of October, 1845, was receivable in evidence, it being stamped with a 5*l.* stamp only, and being offered to prove the demise stated in the second avowry, viz. a demise alleging a tenancy by Leaver and Gore under Giles and Bottle, at the yearly rent of 200*l.* That depends upon the construction of the deed, coupled with the provisions in the 10 Geo. 4, c. 56 (the Act consolidating the laws as to friendly societies), s. 37, and the 6 & 7 W. 4, c. 32 (for the regulation of building societies), ss. 4 and 8. By the 37th section of the former Act, bond and other securities or assurances given to or on account of any friendly society, are expressly exempted from stamp duty. And the 4th section of the latter Act,—its preamble having already shown that its object was to afford encouragement and protection to societies to be established thereunder, and to the property obtained there-

with,—enacts that all the provisions of 10 Geo. 4, c. 56, so far as the same or any part thereof may be applicable to the purposes of any benefit building society, &c., shall extend and apply to such benefit building society, and the rules thereof, in such and the same manner as if the provisions of the same had been therein expressly re-enacted. Reading, therefore, the 37th section of 10 Geo. 4, c. 56, as incorporated into the 6 & 7 Will. 4, c. 32, so far as applicable, it seems to us to exempt from stamp duty all securities given for the purpose of carrying the last-mentioned Act into effect.

It has, however, been insisted that the 3 & 4 Vict. c. 73, s. 1, which limits the exemption from stamp duty in the case of friendly societies, to transactions where the sum to be assured to any individual shall not exceed 200*l.*, has the effect not only of diminishing the exemption as regards friendly societies, but also of restricting it to the like extent in the case of building societies. We think that statute has no such effect. The exemption in the 10 Geo. 4, c. 56, s. 37, is by 6 & 7 Will. 4, c. 32, s. 4, incorporated in the latter Act, as if it had been therein expressly re-enacted, which would not be the case if it were to be held to be abrogated by the passing of a subsequent Act having no such object in view.

The only remaining question is, whether the rules of the society were properly proved—whether they were shown to be rules of a society entitled to the benefit of the statute referred to. It is admitted that they were the rules adopted and acted upon by the society. But it was said that something more was required to make them admissible than the certificate of the barrister appointed by the Act—that allowance and enrolment

at the sessions was necessary. This also is a point that is attended with difficulty, and therefore we would wish further to consider it also.

Wilde, C. J., now delivered the further judgment of the court.

The object and general contents of the deed are inconsistent with the intention of creating the relation of landlord and tenant, at a rent of 200*l.* a year, as stated in the concluding part of the deed, and as alleged in the second avowry.

The deed recites that its object was, to create a mortgage security for the contributions payable in respect of the parties' shares in the capital of the society, and that security is in the last sentence of the deed limited to the sum of 840*l.*; and in order to secure such subscriptions to the extent of 840*l.*, it is provided, that, in case of default the trustees may appoint a collector of the rents, and if the rents shall not equal the arrears due in respect of the contributions, the trustees may sell; and it is declared that the deed is upon trust that the grantors shall retain possession and take the rents and profits until default.

The object of the deed, then, being distinctly expressed to be, to secure the subscriptions to the extent of 840*l.* only, and that the grantors shall retain possession, and take the rents and profits until default, it is quite inconsistent with that object that the grantors should immediately, and before default, or even before the contributions are due, become tenants at the rent of 200*l.*, and that such rent should be payable immediately and during the continuance of the demise, and without reference to the fact whether default should be made in the payment of the contributions or not; so that to construe the deed to create the tenancy stated

in the second avowry, the grantors must be deemed to have contracted to pay the contributions, and also the rent of 200*l.* a year—a construction manifestly contrary to the obvious intention of the parties.

To construe the deed, therefore, to create the relation of landlord and tenant, upon the terms of the second avowry, would have the effect of defeating, and not of giving effect to, the intention of the parties. The only object of the deed was, to give a security for the payment of the contributions, and that part of the deed which is contended to operate as a demise upon the terms stated in the second avowry was but a mode by which that object was intended to be accomplished; but, as before stated, it is not a mode calculated to effect the purpose intended, but the contrary.

And, as the different parts of the deed are inconsistent with each other, the question is, to which part effect ought to be given. There is no doubt, that, applying the approved rules of construction to this instrument, effect ought to be given to that part which is calculated to carry into effect the real intention, and that part which would defeat it should be rejected: and so construing the deed, the court is of opinion that the latter part, importing a present demise of the premises at the rent of 200*l.* a year, cannot have that effect without defeating the intention of the parties; and therefore, as the avowry founded upon such supposed demise is not supported by the evidence, and as the first and third avowries were disposed of during the argument, a verdict must be entered for the plaintiff, with the usual damages in replevin, with the consequences incidental to such verdict.

Rule absolute accordingly.

NOTE to p. 19.

BARNARD *v.* PILSWORTH, 6 C. B. Rep., 698, Note (*a*).

Michaelmas Term, 1849.

The cause was tried before *Wilde*, C. J., at the sittings in London, after Trinity term, 1849. It appeared that the plaintiffs were the trustees of a society called the "Amicable Building Society," duly enrolled under the 6 and 7 W. 4, c. 32. The action was brought to recover the sum of 38*l.*, for a year's rent of premises that had been occupied by the defendant in Pudding-lane, in the city of London, down to Lady-day, 1849. *Hinton*, the lessee of the premises, under whom the defendant was tenant, had, on the 22nd Oct., 1847, mortgaged his term to the plaintiffs, and the defendant had due notice of the mortgage.

Upon the production of the deed, it was objected, on the part of the defendant, that it was inadmissible, not being stamped.

Channell, Serjt., now moved to enter a nonsuit, pursuant to the leave reserved. The liabilities of these building societies' securities to stamp duty was a good deal discussed in *Walker* v. *Giles*, which had not been reported at the time of the trial of this cause; and this court expressed an opinion, that the 37th sect. of 10 Geo. 4, c. 56, by which bonds and other securities or assurances given to or on account of any friendly society are expressly exempted from stamp duty, was, by the 4th sect. of the 6 and 7 W. 4, c. 32, incorporated into the latter statute, so as to extend the like exemption to securities given for the purposes of building societies. There was, however, another point in *Walker* v. *Giles*, viz., as to the construction of the

deed. upon which the court took time to consider, and the decision of which made it not so material to determine the question as to the stamp. Still, if the court intended to decide, and did decide, both points, it would be idle to ask for a rule upon this occasion. (*Maule*, J. :—In *Walker* v. *Giles*, the court certainly intended to decide, and did decide both the points suggested.)

The learned serjeant declined to press the point, and the rule was refused.

NOTE to p. 17.

HARMER *v.* GOODING, 13 Jur. 400, April 30, 1849.

A benefit building society, among its rules, had one that any member giving a month's notice might withdraw his share, and have the money paid by him returned. Certain members, who had given such notice, filed a bill on behalf of themselves and all other members not being defendants against the directors, praying for an account of the dealings of the society, that all losses occasioned by the fraud and mismanagement of the directors might be made good by them, and for the payment of the debts and liabilities of the society. Some of the members had not given notice of withdrawal; but the bill did not state that their names were unknown to the plaintiffs:—Held, on a demurrer for want of equity and for want of parties, that the bill was defective for want of parties, for that neither the plaintiffs nor the defendants (they all being directors) represented the now withdrawing members.

The bill was filed by certain members, on behalf of

themselves and all others, the members of the Hackney Benefit Building Society (except the defendants) against Edward Gooding and six others, who were the directors of the society, three of whom were trustees, and one of whom was the treasurer of the same. The bill charged various acts of alleged fraud, and then charged as follows:—That the members of the said society are more than 200 in number, and that the number of the said members is so great, and that the rights and liabilities of such members are so subject to change and fluctuation by death and otherwise, that it is not possible, without the greatest inconvenience, to make them parties to this suit, and that to do so would render it impossible, in fact, to prosecute this suit to a hearing; and that all the said members, except the defendants, have a common interest with the plaintiffs in the subject matter of this suit, and in obtaining the relief hereby prayed. And the said defendants will sometimes admit that all the members of the said society, who have duly given notice of withdrawal therefrom, have such common interest with plaintiffs; but then they allege that the members of the said society who have not given such notice of withdrawal, have not such common interest, and are necessary parties to this suit: charge that such last-mentioned members are not more than 100 in number; and that if the said last-mentioned members have not a common interest with plaintiffs in the subject matter of this suit, and in obtaining the relief hereby prayed (which plaintiffs do not admit, but expressly charge the contrary to be the fact), such rights and interests as they have adversely to plaintiffs are sufficiently represented by the said defendants, none of whom have given such notice of withdrawal. The prayer was for an account of all dealings and transactions of the society and of the defendants as directors

and trustees, that all losses by their wilful neglect or default, or their breach of trust, might be ascertained, and they declared liable to make good the same, to be paid by them; an account of the property of the society; the appointment of a proper person to realize and receive the same; the delivery up to the receiver of all such property, and all deeds, &c.; an injunction to restrain the defendants from receiving the property; and the payment of the debts and liabilities of the society out of the property, and out of what might be found due from the defendants. All the defendants demurred for want of equity and for want of parties.

Swanston and Beavan, for the demurrer:—By the 4th section of the Act 6 & 7 Will. 4, c. 32, the provisions of the statutes 10 Geo. 4, c. 56, and 4 & 5 Will. 4, c. 40 (the Friendly Societies' Acts), are declared to be applicable, and to extend to the Building Societies' Act; and it is there enacted (10th Geo. 4, c. 56, s. 27), that all disputes arising relating to matters in such societies shall be settled by arbitration by justices of the peace; thus, by an express legislative enactment, in effect ousting the jurisdiction of a court of equity. That such directions have the effect of excluding the jurisdiction of ordinary tribunals, is clear from *Crisp* v. *Bunbury*, 8 *Bing.* 394, where it was held, that an action does not lie against the trustee of a friendly society. Then the bill in effect prays a dissolution, and all the members must be parties for that purpose; and, on taking an account of all dealings, there must be an account of every mortgage, which would be nothing less than an administration suit. The case of *Richardson* v. *Larpent*, 2 *You. & C.* 507, is conclusive to show that the members of the society who have given no notice of withdrawal must be represented. That they are not so by the defendants is clear from the

plaintiffs' own showing, for, if the charges of fraud are true, the defendants have interests adverse to them. *Evans* v. *Stokes*, 1 *Kee.* 24, and *Decks* v. *Stanhope*, 14 *Sim.* 57, are also in point. In *Mosley* v. *Alston*, 1 *Phill.* 798, the Lord Chancellor said, that if what is asked by a bill may be injurious to any, they must be parties to the suit, and that the relief prayed must be for the benefit of the parties for whom the plaintiff professes to sue. They cited also *Rex* v. *Mildenhall Savings Bank*, 6 *Ad. & El.* 952.

Bacon and Southgate, for the bill:—With respect to the objection of want of equity, it is to be observed that the 10th Geo. 4 only extends to disputes between the society and any individual member of the body in reference to the rules. In the Court of Exchequer it was held, in *Cutbill* v. *Kingdom*, 1 *Exch. Rep.* 494, that the rule was so confined, and that in such a matter as that now before the court it was not imperative to have an arbitration. The defendants' counsel had very carefully abstained from showing any case to support such a proposition as that the effect of the arbitration clause was to oust the ordinary tribunals of the country. As to the objection of parties, in the case of *Richardson* v. *Larpent*, which has been cited, the bill prayed an express declaration that the resolution, which some of the members supported, was fraudulent and void; and that, therefore, could not be decided in the absence of any of the members who had assisted at passing it, and who had, therefore, bound themselves by it. The bill seeks to recover a fund for the common benefit of all the members, and stops short of asking a distribution of the funds among the members; and on the authority of *Wallworth* v. *Holt*, 4 *My. & Cr.* 619, and other cases, some shareholders may represent the others; and if even distribution

were actually sought, which it is not, *Apperley* v. *Page*, 10 *Jur.* 994, 11 *Jur.* 278, and *Cooper* v. *Webb*, 11 *Jur.* 443, would be authorities to show that the bill could not be demurrable.

Knight Bruce, V. C.:—I am not sure that this particular bill is not demurrable, on the ground of want of equity. I am not sure that, according to modern authorities, this bill is not so framed as that every shareholder ought to be considered a necessary party. But I do not decide either of these points. Assuming the bill not to be a demurrable one on the ground of want of equity, and assuming that it is not a bill to which all the shareholders or subscribers ought to be parties, I still think that it is defective for want of parties. I think that neither the plaintiffs nor the defendants (the defendants being all of them directors) effectually represent that class of shareholders, or those of the shareholders or subscribers, who have not given notice of withdrawing, the names of those persons not being stated to be unknown to the plaintiffs. I am of opinion, therefore, that this demurrer must be allowed, but that, if the plaintiffs think it worth while, they may have leave to amend; but the costs must be reserved.

Demurrer, for want of parties, allowed; leave to amend generally, and costs reserved.

NOTE to p. 18.

REG. *v.* GRANT, 13 Jur. 1026.

By section 27 of stat. 10 *Geo.* 4, *c.* 56, *relating to friendly societies, an award made according to the*

true purport and meaning of the rules of the friendly society shall be final and binding. The 26th rule of the Leeds Philanthropic Society declared that all matters in dispute between the society and any individual member should be referred to arbitration, that the arbitrators should hear evidence on both sides, and that their decision should be binding to all parties, and final. By section 7 of stat. 4 & 5 Will. 4, c. 40, jurisdiction is given to justices of the peace, in case of neglect or refusal by the arbitrators, to make an award.

P. J., a member of the Leeds Philanthropic Society, who had been expelled for an alleged breach of one of the rules of the society, applied to arbitrators duly appointed according to the statute, and they made an award that P. J. be expelled from the society. P. J., treating the award as void and null, applied to justices for the county, who made an order, in which they adjudged that the arbitrators had neglected and refused to hear evidence on both sides, touching the matter in dispute, and to make their award therein, and that P. J. be reinstated in the society. Upon a rule for quashing the order.—Held, first, that the adjudication by the justices, that the arbitrators had neglected and refused to make an award, was a decision upon one of the preliminaries necessary to their jurisdiction, and therefore was not conclusive. Secondly, that as the affidavits contained sufficient to show that the justices were warranted in considering it proved, that the arbitrators had wrongfully refused to hear evidence on the part of P. J., there was no final and binding award; and therefore the justices had jurisdiction to make the order.

The rules of the society were enrolled at the quarter sessions for the county. The meetings of the society were at Leeds, which had a separate court of quarter

sessions, and the expulsion took place there; but members might reside out of the borough, and the act for which P. J. was expelled took place out of the borough. Held, that justices for the county had jurisdiction to make the order.

This was a rule calling upon the prosecutors to show cause why a certain order made by the justices in and for the West Riding of the County of York, dated the 11th January, 1847, whereby the president, stewards, and members of a certain friendly society called "The Leeds Philanthropic Society," duly established, and holden at Leeds, in the South Riding, under stat. 10th Geo. 4, c. 56, were adjudged and ordered forthwith to reinstate Philemon Jacques in the said society, and readmit him to all the benefit arising therefrom accordingly, should not be quashed for insufficiency.

Lord *Denman*, C. J., in delivering the judgment of the court, said:—On a motion to quash an order of justices brought up by *certiorari*, it appeared by the affidavits that the complainant had applied to arbitrators duly appointed according to the statute, that they had, in fact, made an award between the complainant and the friendly society; that the complainant, treating the award as void and null, had then applied to justices, who made the order in question; and therein declare that the arbitrators had neglected and omitted to make any award, this being the condition on which their jurisdiction to take cognizance of the dispute depends.

Upon these facts the question has been, whether the statement in the order, that the arbitrators had neglected and omitted to make an award, was conclusive. It is clear that the decision of a tribunal, lawfully constituted, upon a question properly brought

before it, respecting a matter within its jurisdiction, is not open to review by *certiorari*. *Reg.* v. *Bolton*, 1 Q. B. 66, 5 Jur. 1154; but the decision of persons assuming to be a tribunal, that they are lawfully constituted, is open to review. In the present case, the justices are in the nature of two arbitrators, the reference being conditional, upon the first arbitrators neglecting or omitting to award; and their decision that this condition existed, is a decision upon one of the preliminaries necessary for constituting them a lawful tribunal for this matter. It is therefore not conclusive within the principle laid down in *Reg.* v. *Bolton*, 1 Q. B. 69, 5 Jur. 1154, but falls within the latter of the two limitations of it there mentioned, namely, where the charge is really insufficient, but is mis-stated in drawing up the proceedings, so that they appear regular; in such case it is competent to the defendant to show by affidavit what the real charge was, and if that shows that the magistrates ought never to have begun the inquiry, the order is to be quashed.

We have, therefore, in the present case, found it our duty to inquire, whether the statement in the order, respecting the neglect and refusal of the arbitrators to make an award, was true. The admitted facts are, that arbitrators were duly appointed, and that the parties attended before them, and that an instrument, purporting to be an award, was made. The disputed fact is, whether the arbitrators refused wrongfully to hear any evidence on the part of the complainant; and a point of law arises, whether, if that be so, the instrument was an award. As to the fact, the affidavits on behalf of the complainant contain sufficient to show that the justices may have been well warranted in considering it proved; and we presume that they were right, as this is not an appeal from them. Then the point

arises, did this fact warrant the statement made in the order. In other words, does the order correctly state the legal effect of the facts.

The 10 Geo. 4, c. 56, s. 27, enacts, that an award made according to the true purport and meaning of the rules of the society shall be final and binding. The rule of the society in question, relating to arbitration, declares that the arbitrators shall hear evidence on both sides, and their decision binding to all parties shall be final. Upon this statement, there is good reason for saying that arbitrators who refused to hear the evidence of one side did not make an award according to the true meaning of the rules of this society, and therefore did not make an award final and binding within the terms and intention of the 10 Geo. 4, c. 56, s. 27.

The 4 & 5 W. 4, c. 40, s. 7, giving jurisdiction to the justices in case of the neglect or refusal of the arbitrators to make an award, recites the 10 Geo. 4, c. 56, s. 27, and intends an award final and binding within the meaning of that statute. It seems to follow, that the justices have jurisdiction where the award is not, in this sense, final and binding, and we have therefore come to the conclusion, that they had jurisdiction in the case now before us.

Another question was, whether the justices for the county had jurisdiction, it being alleged, that the matter in difference arose entirely within the jurisdiction of the borough of Leeds; but although the meetings of the society are at Leeds, and the expulsion took place there, it appears that the society is not locally confined to the borough. Members may reside out of the borough, and the act which led to the expulsion took place out of the borough, and the nature of that act was really the matter in difference; therefore the question must be answered in the affirmative, the

matter of difference not having arisen entirely within the borough of Leeds; and the rule for quashing the order of justices must be discharged.

Rule discharged.

NOTE to p. 21.

MOSLEY *v.* BAKER, 6 Hare, 87, 1 Hall & Twells, 301. 11th Feb. 1848.

The plaintiff became a member of, and purchased 12½ *shares in a building society, constituted under the statute* 6 *&* 7 *W.* 4, *c.* 32, *and the society advanced a sum of* 750*l. in respect of such shares, upon a conveyance of certain property to the trustee of the society by way of mortgage. According to the rules of the society,* 10s. *per month subscription, and* 4s. *per month redemption monies were payable on each share, until a sum of* 120*l. per share should be realised for the non-purchasing members. On a bill against the trustees for redemption:— Held, that, upon the terms of the mortgage deed and the rules of the society, the plaintiff was entitled to redeem only upon payment of all the future subscriptions on his shares, until the dissolution of the society, the probable duration of the society to be ascertained by calculation, and the future payments to be treated as if immediately due.*

The suit was brought to redeem certain premises mortgaged to the defendants, the trustees of the Equitable Provident Association and Savings Fund. By the 37th rule of the society, 10*s.* per share per month, was to be paid by each member, until the object of the society should be fully accomplished. By rule 42, one share or sum of 120*l.* was to be offered, at such

premium as might be determined on, and the member who offers the greatest premium beyond the sum so fixed shall be declared entitled to the advance. By rules 42 and 48, every member who purchased a share was to provide a mortgage of real property, as security for the future payment in respect of his shares. By rule 50, the sum or sums of money which the member was entitled to receive, was to be paid to him or her executing a mortgage of such property, as the solicitor to the association shall require, and depositing the same and all other necessary title deeds relating thereto with the trustees. By rule 58, it was to be specified in the mortgage, that in case the said member shall at any time hereafter fail for six monthly nights to pay his subscriptions, payments, and redemption money, or to observe the regulations, the trustees for the time being were to appoint a person to collect the rents; but should the same be insufficient to satisfy the purpose aforesaid, then to sell the premises, and out of the sale money to discharge all expenses incurred about the sale, and retain for the said association all such principal subscriptions and other payments as shall be then due by such member, under and by virtue of these rules and the mortgage; and to pay the surplus to the said member. By rule 59, every member purchasing a share, was to pay the sum of 4*s.* towards the redemption thereof, and continue paying the same during the continuance of the association, in addition to the monthly subscriptions. By rule 62, if any member shall be desirous of redeeming any security given to the society, he was to be allowed the profits of his share or shares made up to such time, and a deduction was to be made of such profits, and of the amount of subscriptions paid in by such member, from the full amount expressed to be secured by the mort-

gage, and on payment of the balance, together with all fines, a receipt was to be endorsed on such mortgage, according to 6 & 7 W. 4, c. 32. By rule 65, any person might withdraw from the society any share not purchased according to rule 42, and the money subscribed in respect of such share was to be repaid to such member, subject only to certain forfeitures. By rule 103, when the value of 120*l.* should have been realized for each share, after all expenses paid, the society was to terminate.

The plaintiffs mortgaged the premises to the trustees in conformity with the 44th Article, upon trust for the plaintiff, if he paid and observed the subscriptions and regulations on his part to be paid and performed according to the rules; but on his neglect, then the trustees were to sell, and out of the sale monies to pay the expenses incurred in the execution of the trust, and to retain for the association all such subscriptions and other payments as should be then, and should thereafter become due and owing, and payable in respect of the said shares by the plaintiff, his executors, administrators, and assigns, calculating the probable duration of the said association, it being thereby declared and agreed that, in case such sale as aforesaid should take place, all monies which should at any time afterwards become due in respect of the said shares, should be considered as due at the time of such sale, and that the same should be fully deducted and paid out of the monies raised by virtue of the said powers or trusts, and that the trustees or directors of the association should calculate the amount accordingly, and to pay the surplus to the plaintiff.

The plaintiff fell into arrear in respect of his subscriptions, and the trustees sold part of the property. The plaintiff filed a bill to redeem the remainder.

The answer of the trustees denied the title of the plaintiff to redeem the mortgaged property, except upon payment of all future subscriptions; and said that the amount of such subscriptions must be ascertained on the same principle as the mortgage deed directed in cases where the mortgaged premises were sold by the association, owing to the default of the mortgagor.

The plaintiff principally relied on the 62nd section of the articles, and contended that this clause of the articles was not reconcilable with the claim of the society, and that the payment of the subscriptions must be continued until the dissolution of the society. Departing from the provisions of its construction the contract of a building society might become usurious and illegal.

The trustees insisted, that the plain meaning of the association was, that a party who became a purchasing member by that means, received the amount of his share immediately, without waiting for the termination of the society; he, in fact, discounted his share, and thereby incurred the liability of continuing a member, or at least, of continuing to pay his subscriptions so long as the society endure, or so long as, according to the then state of its funds, its probable duration might by calculation be ascertained. This contract was distinctly shown by the terms of the mortgage deed.

The Vice Chancellor *Wigram* delivered the following judgment:—The plaintiff is the owner of 12½ shares in the "Equitable Provident Association and Savings Fund," and the bill is filed for the redemption of the mortgage executed by the plaintiff to the trustees; and the only question is, as to the principle upon which the mortgage account is to be taken. This, it is conceded, must depend upon the construction of the mort-

gage deed, affected or not (as the case may be) by the articles of the association to which for some purposes the deed refers.

The plaintiff has contended, that, in taking the account, he is to be charged with the capital monies, £750 advanced, and also with certain fines to which he has become liable to the society, and is to have credit for all the monthly subscriptions of 10*s*., and monthly sums of 4*s*. which, under name of redemption-monies, he has paid since the advance, and that, upon payment by him to the association of the balance due upon the account so stated, he is entitled to redeem the mortgage. The trustees have contended, that the plaintiff is a shareholder who has received the value of his shares in advance, and is bound to continue his monthly payments so long as those who have yet to receive their shares shall be bound to pay them; and (applying this to the mortgage) that, by the terms of the mortgage-deed, the mortgage-deed was to be paid by monthly payments of 10*s*. each, by way of subscription, on the plaintiff's 12½ shares, and further monthly payments of 4*s*. each, under the name of redemption-monies; that such payments were to continue until the dissolution of the society, which was to take place as soon as, by its operations, the shares should be of the value of £120 each; and that the plaintiff is entitled to redeem the mortgage, only upon payment of the future monthly subscriptions and redemption monies. Some further claims are made on behalf of the association; but these do not affect the question in dispute between the parties, and may, therefore, be excluded from consideration. I shall, for the same reason, exclude from consideration any question with respect to profits, for the disposal of which some provision is made in the articles.

Now, if the matter in dispute is to be settled by what appears upon the mortgage-deed, that is, if there be nothing in the articles of the association which, by reference in the mortgage-deed, affects its construction, it is clear, in my apprehension, that the claim of the association is well founded. I have read the articles, and, although the language in which the clauses bearing upon the matters in question are expressed do not in all respects appear to contemplate a mortgage, in the form of that which plaintiff seeks to redeem, there is nothing in the 62nd clause, or any other, which, as I understand them, is inconsistent with such a contract as I suppose the plaintiff to have made by the mortgage-deed. And if (as I think is the case) the construction of the mortgage-deed is free from ambiguity, it cannot be invalidated, nor can its effects be controlled by any ambiguous expressions in the articles of the association.

The facts necessary to explain the transaction are these:—The object of the association was to raise a fund, by monthly subscriptions, for the purpose of being lent upon security to such of the members of the association (not to strangers) as should be desirous of borrowing money; and these operations were to be continued until, by the monthly payments of the members, and the profits of the association, the value of each share should amount to 120*l.* The monthly subscription of the now borrowing members was to be 10*s.* per share, and with this, and the subscriptions, and payments of the borrowing members, and certain fines, it was calculated or expected that the value of the shares would amount to 120*l.* in something less than ten years. When this was accomplished, the funds were to be divided amongst the shareholders, and the association was to be dissolved. Whether the

calculations of the association were accurate, or their expectations justified by them, or whether the bargain was provident, is not now the question. The bill asks for the execution of the mortgage contract, and does not impeach it on any ground, whether of illegality or impracticability; and the only question before me, upon these pleadings, is, what was the contract between the association and the plaintiff as a borrowing member?

Now the principle upon which the association appears to have proceeded in making advances to its members, as shown by the 42nd and subsequent articles, was not that of a simple loan to a stranger upon a security. No one could be a borrower except a shareholder, and the loan to him was to be effected by paying him the present value of his share in advance —that is, the present value of a share which was treated as worth 120*l.* at a future time. In applying this principle the following course was pursued:—It was taken for granted that 120*l.* would be the value of each share at the time appointed; the monthly subscription of 10*s.* on each share, payable by non-borrowing members, was fixed; the same monthly subscription, and by section 59, a further monthly payment of 4*s.* per share (under the name of redemption-monies), by borrowing members, were also fixed; as were the fines payable by each class of members, in case of default in paying the sums to which they were liable. In this state of things, the transaction being between the members of the association *inter se*, everything material being fixed or agreed upon, and the association having, by its directors, ascertained they had a fund to dispose of, the directors offered one share or sum of £120 for competition amongst all members desirous of borrowing, at such premium as the directors thought fit; and the member who offered the greatest

price above the sum so fixed was to have the advance, and also such additional shares as the chairman of the directors should determine, within the amount which the directors should declare they had to dispose of at such meeting.

Bearing these things in mind, and that the question is, whether the plaintiff, having at the time and in consideration of the advance become a shareholder in the association, and received the value of his share in advance, is not bound to continue his monthly payments until the other shareholders (continuing their subscriptions also) shall have received the value of their shares also—that is, during the continuance of the association; or whether the plaintiff has a right to treat the advance to him as a mere loan to a stranger, who has paid certain instalments towards satisfaction of his debt. Bearing, I say, these things in mind, the deed itself will be easily understood.

Is there, then, anything in the articles of the association to invalidate or alter the effect of the deed, as mere matter of construction? The circumstance that the association had an option, under clause 58, to sell the property in case of the plaintiff's default, will not alter this question. It was an option which they might exercise or decline. But the clause is manifestly so inaccurate, that it cannot furnish, by implication, an inference from which to conclude that the deed is free from ambiguity, and, consistent with the articles, does not express what the parties intended. The clause strictly admits of interpretation in conformity with the deed. If there was any doubt upon this (which there is not) the suit should have been to impeach or correct the deed, which the pleadings do not seek to do. Nor does the bill suggest any difficulty in ascertaining the future duration of the society, so that the amount of

the payments may be settled. I cannot, in such a case, treat the deed as invalid for any purpose within the contract, or consider its construction as altered by the terms of the articles. It is not necessary to remark upon all the articles which may be the subject of comment; but I may observe that the 59th and 65th clauses tend to support the claim upon which the defendants insist. The non-purchasing members have power to retire from the association, but there is no corresponding right reserved to the purchasing members.

It was said, however, that the case made by the association was objectionable in itself. It was admitted that the right of the plaintiff to make for himself such a contract as he pleased could not be disputed; but it was said that the contract, as insisted upon by the association, was of such a character that the court would not give effect to it. I cannot take that view of the case. To me it appears that every shareholder, whether purchasing or non-purchasing, must, *primâ facie*, stand in the same position, must be liable to pay all the future contributions until the association terminated, and that the position of the two classes of members must be and continue in this respect the same, whether he receives the value of his share before, or awaits the receipt of it at the termination of the association.

The advance, as I have said, was not a mere loan to a stranger out of the funds of the society; it was an advance at its then present or conventional value, of the value of the plaintiff's interest in the shares he held at the termination of the association. He was, therefore, in the position of a member who had received by anticipation the 120*l.* which the non-purchasing members were not to receive until the termination of the association. In other respects,—or at

least in one important respect,—the position of the two classes of members was the same. Each had to pay (according to the rules of the association) the price of his shares, so far as the future monthly payments were concerned. And if the transaction were left to work itself out in a regular course, there can be no doubt that the plaintiff was as much bound to pay his future monthly payment as any non-purchasing member. The circumstance that he had discounted his share, and received its value in advance, would not alter his liability in this respect. He is a purchaser of shares who has received the value of his shares, but whose purchase-money is unpaid. It is not in dispute that the plaintiff might claim the privilege of settling his account with the association in that way, and that the association could not (unless the plaintiff were in default) make any demand upon him, except in respect of his monthly contribution. The question is, whether the association had not a corresponding right to say that the transaction should be worked out in the same way.

The plaintiff, in fact, by what he now asks, insists upon a right to rescind the transaction which made him a shareholder, and to be, as it were, a stranger to the association from the beginning. This it is not open to him to do. I desire it, however, to be understood, that I proceed upon the stringent words of the deed, and the insufficiency of anything in the articles to affect its construction.

On the minutes of the order a question arose, whether upon taking the account of the future subscriptions to be paid by the plaintiff, the amount was to be ascertained by mere addition of the sums, or by determining the present value of the future payments.

The *Vice-Chancellor*:—My decision upon the principle upon which the account in this case ought to be taken was in favour of the claim of the association. I so decided upon construction of the mortgage-deed. And in order that the plaintiff might have a ground of immediate appeal, I proposed to insert in the decree a direction to the master to ascertain the amount of the plaintiff's present liability in respect of future payments under the mortgage-deed. This has given rise to a new question which had not before been adverted to. Is the master, in ascertaining such present liability, to charge the plaintiff with the present value of his future monthly contributions, or with their actual amounts, as if the same were now due?

At the time of expressing my opinion upon the principal case, I suggested (what appeared to me) objections to the contract contained in the mortgage-deed, and others have since occurred to me. My observations upon that subject, however, must not be pressed too far. To some extent, all other shareholders will suffer from miscalculations and losses, as well as the purchasing shareholders. To some extent he is only in the position of a partner who participates in the losses which happen to the whole concern. But as I cannot but think that a contract like that contained in the mortgage-deed is not free from observation, I must repeat what I before stated, that in the decision I have already pronounced, I have proceeded exclusively upon the mortgage-deed. If the articles to which the deed refers had been inconsistent with the deed, I might have been bound to consider whether the deed was authorized by the articles, or to have modified the language of the deed in construction, with reference to the language of the articles to which

the deed refers. But being satisfied that there was no inconsistency, I held myself bound to look to the deed as evidence of the rights of the parties. I shall pursue the same course for the purpose now before me. What, then, is the principle upon which in the abstract a mortgagor is entitled to redeem his security? Is it not that of paying "the full amount of what is secured by the mortgage," the very words of the 62nd clause in the articles? What, then, is the full amount secured by the mortgage in the present case? The principle of my decision is, that the plaintiff is a shareholder who has received in advance the present value of his share, which (value of their shares) non-purchasing shareholders will not receive until 120*l.* each has been realized. His future monthly payments constitute the purchase-money which he is to pay for what he has received; and those payments are therefore the amount which the mortgage was created for the purpose of securing. That alone, however, would leave the present question open. But in the deed I find a clause which decides what in fact the rights of the parties are, in the case of realizing (not indeed by foreclosure, for that would decide the very point) by sale the amount secured. (His Honour read the clause in the mortgage-deed, providing that the monies which should at any time afterwards become due should be considered as due at the time of sale.) I do not think that the right would be different in case of redemption, and I must therefore direct the account to be taken of what is due to the defendants, in respect of the future subscriptions and payments, according to the terms of the mortgage-deed.

This judgment was affirmed by the Lord Chancellor, 1 Hall and Twells, 301.

NOTE to p. 23.

DOE D. BASTOW *v.* Cox, 11 Q. B. Rep. 122.
15th November, 1847.

Proviso in a mortgage deed to the trustees of a benefit building society, whereby A., the member, agreed "to become tenant" to C. and D., the trustees, of the premises, &c. "at their will and pleasure, at and after the rate of 25l. 4s. per annum, payable quarterly." A. remained in possession under this agreement for two years, and paid a year's rent; after which the lessors distrained for four quarters' rent:—Held, *that A. was tenant at will, and not from year to year.*

This was an action of ejectment. It appeared that the defendant, on June 18th, 1844, mortgaged his interest in the premises to the trustees of a building society, now lessors of the plaintiff, by a deed containing this proviso: "The said W. Cox doth hereby agree, to become tenant to the said R. Bastow," &c. "their executors," &c. "of the premises hereby demised, henceforth at their will and pleasure, at and after the rate of 25*l.* 4*s.* per annum, payable quarterly."

The defendant retained possession, and paid a year's rent, but afterwards made default; in January, 1847, the lessors of the plaintiff distrained for four quarters' rent then due; and on May 6th, 1847, they gave him notice to quit in a week; which not being obeyed, the present action was brought. The defendant's counsel insisted that, by the proviso, he was tenant from year to year, and entitled to six months' notice. *Coltman*, J. was of a different opinion, but reserved leave to move for a nonsuit. Verdict for plaintiff.

Lush now moved that a nonsuit might be entered. The legal operation of the proviso was to create a tenancy from year to year.

Lord Denman, C. J.:—The courts are desirous to presume a tenancy from year to year, where parties do not express a different intention: but here they have expressed it. To hold otherwise would be going beyond any decided case. *Rule refused.*

NOTE to p. 24.

COPLAND *app.*, BARTLETT *resp.*, 6 Com. Bench Rep. 662; 13 Jurist, 127.

B., a member of a building society, established under 6 *&* 7 *W.* 4, *c.* 32, *mortgaged to the society freehold land* (*the purchase money for which had been advanced to him by the society*), *to secure the monthly payment of* 15s. *becoming due upon his shares. By virtue of the mortgage, in case of three successive defaults by B. in the monthly payments, the society were entitled to enter and retain possession of the land until the arrears were paid. B. had never made default, and continued in possession; but the sum of the monthly payments in the year, deducted from the annual value of the freehold, reduced it below* 40s.:—*Held, that B. had not free land or tenement to the value of* 40s. *by the year above all charges, within the meaning of* 8 *Hen.* 6, *c.* 7; *and therefore was not entitled, as mortgagor in possession, to be registered as a county voter, under* 6 *&* 7 *Vict. c.* 18, *s.* 74.

It appeared that George Brooks was a member of the Chelmsford and Essex Building and Investment Society, in which he held one share and a half, and

became the purchaser in fee simple of a cottage and garden, value 8*l.* per annum. The society advanced the purchase-money, 65*l.*, and the voter mortgaged the premises to the society to secure the payment becoming due upon his shares, viz., 15*s.* per month, during the existence of the society; and by virtue of the mortgage, the society were entitled, upon failure of payment by the voter, for three successive months, of the amount due upon his shares, to enter upon and retain possession of the premises till the arrears are paid; but, until such default the voter was to enjoy the property. The voter never made default in making his payments. The revising barrister held that the annual value of the voter's property, viz. 8*l.* per annum, was reduced by the charge of 15*s.* per month much below the amount of 40*s.* per annum, and erased his name from the list of voters.

Byles, S., for the appellant:—"The claimant in this case is entitled to vote, under stat. 8 Hen. 6, c. 7, as a person who has free land or tenement to the value of 40*s.* by the year, at the least, above all charges. The deed whereby, as the respondent contends, this annual value is reduced, the case treats as a mortgage in the usual form; that is the most unfavourable view for the appellant. But, first, supposing it to be so, the appellant is still entitled to vote, as mortgagor in actual possession, under 6 & 7 Vict. c. 18, s. 74. But, secondly, this is not an ordinary mortgage. The Building Societies' Act, (6 & 7 W. 4, c. 32, s. 3,) empowers any such society, "in and by their rules to describe the form of the mortgage which was necessary, &c." It appears, however, that the society are not entitled to enter upon the premises, until failure of payment by the appellant for three successive months of the amount due upon his shares. Default has never been made; there is,

therefore, no right of entry at present existing, nor any sum accruing due, which can now be taken in reduction of the claimant's interest in the land. And thirdly, the principal sum advanced will never be due, which distinguishes this from the ordinary case of a mortgage. The charge upon the property is future and contingent, in the nature of a rent-charge or an annuity; or the appellant may be said to have a fee simple, defeasible upon a condition subsequent, in respect of which he is clearly entitled to vote, under stat. 8 Hen. 6, c. 7.

Baddeley, for the respondent:—First, it is sufficiently shown to the court, that the deed in question was a mortgage. It is so termed by the revising barrister, who also states that there is a right of entry in the mortgagees; and the court will presume that the deed was in the usual form, with the usual powers and incidents of a mortgage. This is also evident from the language of sects. 1 & 5 of the Building Societies' Act itself. It is clear, that the property was conveyed as a security for the repayment of a sum certain; for it is stated, that the mortgagor may redeem upon payment of that sum, though no rule is given by which we can compute it. What may eventually become of the principal is immaterial. Cases decided by the committees of the House of Commons, on the question of reduction by mortgage, are to be found in Rogers on Elections, 6 Ed. 160. The Bedfordshire Committee, (2 Luders, 469,) came to a resolution that the interest of a mortgage (which is charged upon the estate in right of which the voter voted,) being established by evidence, so as to reduce the value of the estate to less than 40*s.* per annum, invalidates the vote. To the same effect was the resolution by the Middlesex Committee, (2 Peck. 103); and the case of *Wetherall* v. *Hall*, (Heywood, Counties, 145.) But the strongest authority

to show the intention of the legislature, and the meaning of "charges" in 8 Hen. 6, c. 7, is the declaration which the 28 Geo. 3, s. 6, requires the voter at a county election to make, "that he really and truly has an estate of the clear yearly value of 40*s.* over and above the interest of any money secured by mortgage upon it, and over and above all rents and outgoings payable out of, or in respect of, the said estate, other than parliamentary, public, or parochial taxes." It is difficult to see how the appellant could make that declaration.

Byles, Serjt. in reply:—The case cited from Rogers on Elections are not controverted. The monthly payment in this case, is not a payment of interest; and those cases therefore do not apply. (*Maule*, J.: At all events, he is to make certain monthly payments (amounting in the whole to 9*l.* a year), in his capacity as mortgagor. Do not those payments come within the terms of the declaration required to be made by the 28 Geo. 3, c. 36, s. 68. The appellant will have a very good vote when the society is dissolved; but it can hardly be said that he has one now.) If he is mortgagor, he is also one of the mortgagees, being a member of the society, and the amount of his interest as mortgagee is not stated in the case, nor is it shown in what way his qualification is reduced below 40*s.* (*Maule*, J.: If the appellant wishes it, the case can be mended in that particular.)

Wilde, C. J.:—The revising barrister, I think, has come to a right conclusion of law, which conclusion is founded on certain facts within his jurisdiction to find, and which he has rightly found. It has been urged upon us to consider what may be the future condition of these parties, and what circumstances may hereafter arise to affect their interests. But it does not seem to me to be very material to do so. The question is, whether, on the day of registration, the

claimant was in a position to be entitled to be registered as a voter. His right depended upon his having been in possession, for a certain considerable period, of an estate in which he had an interest of 40*s.* a year. Now, during that period, he had, as a matter of fact, paid 15*s.* a month in respect of what is termed a mortgage on his estate. Mortgages, no doubt, may be of various descriptions; but at the same time, an instrument of a given form is generally known as a mortgage; and I think that the legislature must be taken to have used the term in that its popular sense. Then the question is (as the stat. Hen. 6 gives the right of voting to a person having free land or tenement to the value of 40*s.* by the year at the least, above all charges), what is meant to be included under the word "charges?" That word appears to have received judicial interpretation in several instances, and to have been understood as including interest on a mortgage. As the object of the law was to ascertain that the person derived a certain sum of money from the estate, which was supposed to bespeak a given situation in society, entitling him to vote, one looks to see how these payments operate. Now, if a man, as often as he receives 50*s.* with one hand, pays 30*s.* with the other, I think he cannot be said to have the quantum of interest which the statute required as a qualification to vote; and though these payments may not in one sense strictly fall within the description of a charge upon the estate, yet they operate so far in diminishing the claimant's interest in it, as to displace him from that position which would entitle him to vote. The stat. 28 Geo. 3, c. 36, did not propose to vary the right of voting, but to carry into effect the stat. Hen. 6. Expanding and defining the word "charges," it compels a person to take an oath or declaration "that he possesses an estate of the clear yearly value of 40*s.* over

and above the interest on a mortgage." Since that statute, it is perfectly plain, that this declaration is a condition precedent to his being entitled to claim as a voter; and if the claimant was unable to make that declaration, how could the revising barrister say he was entitled to be registered? In passing subsequent statutes, which do not propose to alter the old right of voting, the legislature must be taken to have been fully apprised of the nature of the interest which conferred that right—that is, the possession of an estate of the yearly value of 40*s.* above all "charges," as explained by stat. Geo. 3. Such was the interest required antecedent to the Reform Act; and neither that nor any subsequent statute has altered it. But it is said, Suppose that this be a charge, still the 6 Vict., c. 18, s. 74, entitles the claimant to vote as mortgagor. But that statute did not intend to give the mortgagor of a freehold a different right of voting from that which he previously had. It left him, indeed, unfettered by technical difficulties as to the quality of his estate, as modified by the execution of the mortgage or otherwise; but, as to the quantity of his interest, it left him exactly as he was before. His being mortgagor, the stat. says, is no objection to his vote, provided he retains sufficient pecuniary interest in the estate, to give him the legal qualification. He must still make the declaration required by stat. Geo. 3, whether he is mortgagor or not, that he has an interest of 40*s.* a year. This case finds, that there is a charge arising out of the mortgage, which reduces his interest to less than 40*s.* a year. I think, therefore, that the appellant is not entitled to vote. It appears by the authority of the case in equity (*Mosley* v. *Baker*) that there is no foundation for considering the mortgage to this society as other than an ordinary mortgage. The sum which

he has to pay to redeem is, in equity, a charge upon the estate which he must pay before he is entitled to have it re-conveyed to him; or, supposing no re-conveyance necessary, before it can revest in him. On the whole, looking to the spirit of the law, (which is that the claimant shall have a real beneficial interest to the amount of 40*s.* a year, to be entitled to a vote,) if he has mortgaged his estate, so as to have incurred an annual charge exceeding the annual value of it, he cannot be said to possess that interest which entitled him to be registered as a voter. The decision of the revising barrister must, therefore, be confirmed.

Coltman, J.:—I am of the same opinion; and I do not think that it was the intention of the stat. of Vict. to vary the quantum or value necessary to confer a vote. Strictly speaking, these payments are not a charge upon the estate; but on principle, and upon the construction of the statutes referred to, they must be considered as disentitling the present claimant to be registered as a voter.

Maule, J.:—I also think tha the is not entitled to vote. The Acts which say that the mortgagor in possession shall vote, and not the mortgagee, clearly are for the purpose of determining the question, when two persons are possessed of a freehold interest in the same estate, which shall exercise the right of voting in respect of that estate. In an equitable, and, therefore, in a right way, they decide that the person in actual possession, or in receipt of the rents and profits of the land, shall be entitled to vote. They do not affect the amount of the freeholders' interest in the land; what that must be, is clear from the stat. Hen. 6, and the declaration which the voter is required to make by the stat. 28 Geo. 3, c. 36, "that he has an estate of the clear yearly value of 40*s.*" I think, therefore, that, in

so far as the payment of 9*l.* a year in respect of this land was to be made by the appellant, and not to be received by him during some years, and during the material one, viz., that for which he claimed to be registered, it must be deducted in estimating the annual value of his freehold. It is said that the case does not show how that payment reduces his qualification below 40*s.*, as the appellant is both mortgagor and mortgagee. The case might be amended in that respect; but my brother Byles, knowing how the facts stand, prudently declines making the amendment. We must, therefore, assume that this payment would reduce his interest on the land below 40*s.* That being so, I think he is not entitled to be registered as a 40*s.* freeholder.

Williams, J.:—I am of the same opinion. At first, I had some difficulty in understanding on what principle the stat. 28 Geo. 3 assumes that payment of interest on a mortgage is a charge upon land within the meaning of the stat. 8 Hen. 6. But, as the legislature has declared it to be so, I think we cannot escape from the conclusion, that the monthly payments in this case are a charge within the meaning of the latter statute; and that the appellant is not, therefore, mortgagor in possession of a freehold estate, of the annual value of 40*s.*, clear of all charges.

Decision confirmed.

PAYNE, *Ex parte*, 5 Dowl. & L.; 13 Jur. 634.

By the rules of a building society, duly enrolled under the 6 *&* 7 *Will.* 4, *c.* 32, *it was provided that all matters of dispute should be preferred to two of her Majesty's justices of the peace, in pursuance of the*

provisions of the 10 ***Geo.*** 4, ***c.*** 56, ***s.*** 27. ***Held, on motion for a mandamus to the judge of one of the county courts to proceed and hear a plaint levied by one of the members against the officer of the society, that the jurisdiction of the county court did not extend to any disputes arising between the members of any such societies.***

This was a rule calling upon the judge of the county court of Bedfordshire to show cause why a mandamus should not issue commanding him to hear a plaint in a cause of *Payne* v. *Garratt*. The following were the facts as they appeared from the affidavits. The plaintiff, Payne, was a member of a certain building society, duly inrolled under the 6 & 7 Will. 4, c. 32; and the defendant, Garratt, was a trustee or officer of the said society. Among the rules was one (rule 25) that all matters in dispute be referred to two of her Majesty's justices of the peace, according to the provisions of the 10 Geo. 4, c. 56, s. 27. In consequence of certain disputes that had arisen, Payne withdrew from the society, and then levied a plaint in the county court for his share, which was under 20*l*. The judge, considering that he had no jurisdiction to entertain the matter, refused to hear the plaint, whereupon the present rule was obtained.

Wightman, J.—Upon a rule for a mandamus to the judge of the county court to proceed with this action, which was brought by a member of a building society, within the provisions of the 6 & 7 Will. 4, c. 32, against an officer of that society, it was contended that by section 4 of that statute, incorporating the provisions of the 10 Geo. 4, c. 56, ss. 27, 28 and 29, and by the 25th rule of this society, directing a reference of all disputes to justices of the peace, the

right to bring this action was taken away; and I am of opinion that this is so. By those sections, provision is directed to be made by the rules, specifying whether disputes shall be referred to justices or to arbitrators, and the decision upon such reference is made final. These sections and this rule, providing for a cheap, simple, and speedy decision, oust the jurisdiction of the ordinary tribunals (*Crisp* v. *Bunbury*, *Timms* v. *Williams*, 2 Q. B. Rep. 413). In *Cutbill* v. *Kingdom*, the action was held maintainable, because the rule there relating to reference did not comprise the matter of that action, but by the exception the rule was recognized. The 9 & 10 Vict. c. 95, s. 58, does not operate to take away the effect of these statutes from county courts, or revive a power of bringing actions there which had been taken away from all courts generally. The rule, therefore, must be discharged.

Rule discharged.

Whilst this work was in the press, another case was decided as to the terms upon which property mortgaged to a building society might be redeemed, and which seems adverse to the decision in *Mosley* v. *Baker*, mentioned at p. 21. In the case referred to, *Seagrave* v. *Pope*, which came before Vice-Chancellor *Knight Bruce* for judgment, on the 8th of March last, a bill was filed to redeem certain property mortgaged to the trustees of the Camberwell Building and Investment Society. It appeared that the plaintiff was a holder of ten shares in the society, and on condition of an advance in respect thereof executed a mortgage to the trustees. By the rules, 8*s*. 6*d*. per month subscription,

and 3*s.* 6*d.* per month redemption money, were payable on each share, until the objects of the society were accomplished. By the last rule, the society was not to terminate until the sum of 100*l.* for each share, with all other expenses, were fully paid and satisfied; and by the 14th rule, a member might redeem on giving one month's previous notice, and the directors were to award him the same proportion of profits per share as allowed on the withdrawal of unpurchased shares, and to make a deduction thereof, and of the amount of subscriptions paid in by him, from the full amount expressed to be secured by the mortgage. The mortgage was made in the usual form, upon trust for sale, if default was made in payment of subscription or redemption monies, &c.; and declared "that out of the sale monies were to be retained all such principal money, subscriptions, or other payments as should have been advanced or be due in respect of the shares, it being agreed that in case of a sale, all monies which would at any time afterwards become due, in respect of the said shares according to the rules, should be considered as then immediately due, and be deducted and paid out of the monies received:" and it was held that the plaintiff was entitled to redeem, upon paying the balance of the 544*l.* (the amount advanced to him in respect of his shares) at the end of a month from the notice, with interest at 4*l.* per cent. from that time, credit being given him for all the monthly payments of 8*s.* 6*d.* made by him up to that period, but not for the monthly payments of 3*s.* 6*d.*, and to be debited with all the monthly payments of 3*s.* 6*d.* for redemption money not paid by him within the same period, but not with any monthly payments in respect of any period subsequent to the end of the month in which notice

had been given, and the Vice-Chancellor in giving judgment said he did not think that *Mosley* v. *Baker* governed the case before him.

The society have, it is believed, appealed from this decision, and the question is certainly one of very great importance to these societies.

SEAGRAVE *v.* POPE, *Vice-Chancellor Knight Bruce*, 8th March, 1850.

The suit was brought to redeem certain premises which, under a deed of December 1847, had been conveyed to the defendants—the trustees of the Camberwell Building and Investment Society.

The society was established in November 1843, and the rules thereof had been duly certified under the provisions of the 6 & 7 W. 4, c. 32, the Act for the regulation of benefit building societies. The first six rules regulated the appointment, &c., of officers.

7th. "Every member to pay his subscription of 8*s.* 6*d.* per share per month, commencing at the first monthly meeting, with all fines due from him until the objects of the society have been fully accomplished."

9th. "That so often as the funds of the society shall amount to a share or sum of 100*l.*, the share shall be awarded to the highest bidder by premium for the preference."

11th. "That any member, having received cash for his share or shares, shall pay the sum of 3*s.* 6*d.* as and towards the redemption thereof for each and every share he may hold, on the next subscription day after receipt thereof, and shall continue paying the same

during the continuance of the society, on every succeeding monthly subscription day, with and in addition to the monthly subscriptions."

12th. "That when any member shall have been awarded his share or shares, pursuant to Art. 9, he shall forthwith give notice of the situation of the premises intended to be offered for the security thereof. That when the directors shall be satisfied that the premises so to be offered as aforesaid are a sufficient security to the society, they shall authorize the treasurer to pay to such member the sum or sums of money which he or she shall be entitled to receive, on such member executing a mortgage of the premises as the solicitor to the society shall require, and deliver the same, and all other necessary title deeds relating thereto, to the solicitor, to be deposited with the trustees as a security to the said society, for so much money as shall therein be expressed to be secured, and the trustees shall make such payment accordingly. That in the said mortgage deed, it shall be specified that in case the said member shall at any time thereafter fail, neglect, or refuse for six calendar months to pay, observe and perform, all or any of his or her subscriptions, payments, and regulations, on his or her part respectively to be paid, observed, and performed, then the trustees or directors for the time being may appoint a person or persons to collect the rents and profits of the premises therein mentioned; but should the same be insufficient to satisfy the purpose aforesaid, then the trustees, or the directors in their names, may, without the concurrence or consent of the said member, absolutely sell and dispose of all or any part of the said premises by public auction, but in case no public sale can be effected, then by private contract, for the most money that can be had

or gotten for the same, and shall receive the purchase-money arising therefrom; and at such public sale the trustees or directors, or one of them, or some other person to be appointed by him or them, in writing, shall be allowed to buy in the premises on behalf of the society, and to resell the same, without being answerable for any loss that may be occasioned by such re-sale; and out of the money to arise from such collection of rents and profits, or such sale as aforesaid, the directors for the time being shall in the first place discharge all costs, charges, and expenses, which may be incurred on account of such collection of rents, or sale or sales, or in anywise relating to the trusts therein contained, and in the next place shall retain and reimburse themselves and the said society, all such subscriptions and other payments as shall then be due, owing, and payable by such member under and by virtue of these rules and the mortgage deed; and the monies so retained for the said society, shall immediately be placed with the society's banker, to the account of the trustees, for the use and benefit of the society, and they shall and will pay the surplus (if any) arising from such sale or collection of rents to the said member, or to such other person or persons as he or she shall, by writing under his or her hand, direct or appoint to receive the same."

14th. "That if any member who shall have received his or her share or shares, or any portion of them, shall be desirous of paying and satisfying the security or securities which shall have been given for the same, and shall give notice of such his or her desire to the directors, the directors shall, within one month thereafter, award to such member the same proportion of profits per share as is allowed on the withdrawal of unpurchased shares, and the directors shall make a

deduction of such profits and of the amount of subscriptions paid in by such member from the full amount expressed to be secured in and by the mortgage, and the directors are hereby authorized and empowered to receive the balance in one payment, or by such instalments as the directors and member shall agree upon; and on the payment of the balance, together with all fines and other sums due in respect of such shares, the directors shall desire the trustees to deliver up all deeds and other documents in their custody relating to the security of the member or such property, and at his or her cost to endorse a receipt or acknowledgment on such mortgage, according to 6 & 7 Will. 4, c. 32, s. 5."

16th. "That any person who shall be desirous of withdrawing from this society any share or shares which shall not have been purchased according to Rule 9, shall be allowed to do so on giving one month's notice, in writing, of his or her intention, to the directors, at any general meeting of the society; and the money subscribed in respect of such share or shares shall be repaid to such member, subject only to the forfeitures next hereafter mentioned, that is to say, &c., that if the application to withdraw any such share or shares shall be made within the fifth or any subsequent year from the holding of the first meeting thereof, the directors are hereby empowered to allow the member so desirous of withdrawing, out of the profits which the society shall have realized, a bonus for the withdrawal of each share as they shall from time to time appoint."

33rd. "That when all the payments hereinbefore mentioned, that is to say, the sum of 100*l.* for each share, with all other expenses and liabilities of the society, shall be fully paid and satisfied, then the

accounts shall be finally audited, and the society shall terminate; and the trustees shall, with the advice of the solicitor of this society, deliver up to each member, or his legal representatives, the title-deeds and other documents which shall have been deposited with them by such member, as a security to the society, and shall and will, at his or her request, indorse on his or her mortgage a receipt for all the monies intended to be secured thereby, pursuant to 6 & 7 Will. 4, c. 32, s. 5."

The plaintiff in 1847 became a member of, and subscribed for ten shares in, the society, and executed a mortgage to the society as a security for the money borrowed in conformity with the rule.

The mortgage deed, dated in December, 1847, recited the title of the plaintiff to the premises; the institution of the association; that the plaintiff had become entitled to ten shares, and was, according to the rules of the association, entitled to receive out of the funds thereof 544*l.* in respect of the said shares; and that, for securing the due and regular payment of the subscriptions, redemption fee, and other monies which should become payable by the plaintiff in respect of his shares, it had been agreed that the said premises should be assigned and demised to the defendants, the trustees of the association, upon the trusts thereinafter declared; and in consideration of the sum of 544*l.* the plaintiff assigned and transferred the messuages and premises to the trustees of the society for the residue of the term therein mentioned, upon trust, if the plaintiff, his heirs, executors, &c. should from time to time duly pay and observe all the subscriptions, payments, redemption money and regulations of the society, in respect of his said shares, to permit the plaintiff, his heirs, executors, &c. to hold and enjoy the said premises, and receive the rents and profits thereof, for his and their own benefit. But

if the plaintiff should fail, neglect, or refuse, to pay observe, and perform all or any of the subscriptions, payments, and redemption monies or regulations, on his or their parts to be paid, observed, and performed, or should not perform the covenants in the lease, then in any or either of such cases the trustees of the society should appoint a collector of the rents, and thereout pay, satisfy, and effect all the said purposes; and if the rents should be insufficient for such purposes, upon trust to sell the said premises, and out of the monies to arise from such rents, profits, or sale, in the first place to retain and pay the expenses incurred in the execution of the trust, and then to retain for the society all such principal money, subscriptions, or other payments as should have been advanced to or be due from the plaintiff, his executors, administrators, and assigns, in respect of the said shares, it being thereby declared and agreed, that in case such sale as aforesaid should take place, all monies which would at any time afterwards become due. in respect of the said shares according to the rules of the society should be considered as then immediately due, and the same or so much thereof as might be lawfully demanded should be fully deducted and paid out of the monies raised by virtue of the said powers or trusts; and the plaintiff thereby covenanted to pay the subscriptions and interest payable on his shares according to the rules, and to perform all the rules.

On the 4th of November, 1848, the plaintiff gave notice to redeem the mortgage on payment of 377*l.* 7*s.* 6*d.* less the interest on redemption money from the present time, or the time of repayment, to November, 1854, when the society, as it was calculated, would cease, at 3*s.* 6*d.* on each share; and he offered to pay all subscriptions, interest, and fines which might be due from

him up to that time. The bill, which was filed in January, 1849, prayed that it might be declared that the plaintiff was entitled to redeem upon payment of the sum of 237*l.* 18*s.*, the amount actually advanced by the society less the amount of subscription paid by the plaintiff, and that the proportion of the profits to which the plaintiff was entitled might be ascertained.

The answer of the trustees denied the title of the plaintiff to redeem the mortgaged property, except upon payment of all future subscriptions of 8*s.* 6*d.* per month and 3*s.* 6*d.* per month for redemption money, which might thereafter become payable during the continuance of the society.

Mr. *James Parker* and Mr. *Hardy*, for the plaintiff, submitted that the case was distinguishable from *Mosley* v. *Baker*, inasmuch as Mr. Fleming had not discounted or anticipated his shares, but had merely received money on the security of his property; and that if he repaid the amount he had received, he continued a member of the society. This was a loan upon security; *Mosley* v. *Baker* was the case of a purchase of shares in the strictest sense of the term.

Mr. *Russell* and Mr. *Terrell*, for the trustees of the society, insisted that the case must be governed by *Mosley* v. *Baker*; that the rules in the two cases were identical on the subject of redemption, as also were the mortgage deeds, with the exception that in this case the trustees were authorised to retain out of the proceeds of a sale under the power, not only all the future subscriptions and payments which would become due during the estimated duration of the society, but also the "principal money" advanced to the plaintiff on taking up his shares. The directors had decided that the probable duration of the society would be eleven years from its commencement in 1843.

Knight Bruce, V. C.:—I have had an opportunity of considering this case since the argument the other day. As I understand, the plaintiff, Mr. Fleming, more than a month before the commencement of this suit, gave a notice to the directors that he was desirous of paying and satisfying the security made by the deed of 10th December, 1847. Is not that so?

Mr. *J. Parker*:—Yes, sir.

The *Vice-Chancellor*:—I collect, also, that this notice was valid and effectual within the meaning of the 14th rule, that is, the second division of the 14th rule, unless the deed of the 10th December, 1847, prohibited or precluded the right to give the notice. That is so, is it not?

Mr. *J. Parker*:—That is so.

The *Vice-Chancellor*:—And I am of opinion that the deed was not intended to prohibit or preclude, and did not prohibit or preclude, the right to give the notice. The next question is, whether by reason of the deed, the account between the plaintiffs and defendants ought to be taken in a manner more prejudicial or less advantageous to the former, than that which the second division of the 14th rule provides; and I am of opinion that it ought not. The language of the deed does not, in my judgment, at least in the actual circumstances of the case, render such a course necessary or proper. It seems to me that Mr. Fleming, having given the notice which he has, must be held entitled to redeem or have restored to him the property comprised in the deed, upon the footing of paying the balance that was justly due from him on account of the 544*l.*, at the end of a month from the notice, with interest at four per cent. per annum from that time; and that, for the purpose of ascertaining the amount of the balance, he ought to have credit for the

monthly payment of 8*s.* 6*d.*, so far as paid by him to that period, and for the 42*l.* 12*s.* 6*d.* That is, I think, the amount?

Mr. *J. Parker*:—Yes, sir.

The *Vice Chancellor*:—But not for the monthly 3*s.* 6*d.*; and ought to be debited with the monthly 3*s.* 6*d.*, so far as not paid by him to the same period, but not with any monthly payment in respect of any period subsequent to the end of the month. How the matter would have stood if the notice given by Mr. Fleming had not been given, or if, any default having been committed by him, the trustees or directors had proceeded under the deed upon that footing, it is not necessary, I think, to declare an opinion. It is very possible, I may add, that, had the case of *Mosley* v. *Baker* happened to have come before me, I should have decided it as it has been decided. But that is quite immaterial, for I am bound by the authority; which does not, however, in my opinion, govern or affect the present case.

[The author is indebted to Messrs. Shield and Harwood, the solicitors to the Society, for the brief, and the short-hand writer's notes of the judgment, in the abovecase.]

RULES

FOR A

PERMANENT BENEFIT BUILDING SOCIETY.

NAME AND OBJECT.

THIS Society shall be called the Benefit Building Society, and is established for the purpose of raising by Monthly Subscriptions of per Share, not exceeding each, a stock or fund to enable each or any Member to receive out of the funds of the Society, the amount or value of his Share or Shares therein, to erect or purchase one or more dwelling-house or dwelling-houses, or other real or leasehold estate, to be secured by way of mortgage to the Society until the amount or value of his Share or Shares shall have been repaid to the Society, with all fines and other payments incurred in respect thereof.

ENTRANCE FEE.

The Entrance Fee shall be *2s. 6d.* per Share, and so in proportion for any part of a Share.

AMOUNT AND VALUE OF SHARES.

The amount of each Share shall be £ .

The value of each Share at the first monthly Subscription Meeting shall be £ ; and the value of a Share at the second or any subsequent monthly Subscription Meeting shall be the sum set opposite to the date of such second or subsequent monthly Subscription Meeting in column of the first Schedule hereto annexed.

CERTIFICATE OF SHARES.

Every Member, upon subscribing for a Share or Shares, and signing the Share Register Book in respect thereof as hereinafter provided, shall be entitled to a certificate or certificates of such Share or Shares, specifying the numbers and amount thereof, respectively signed by three Directors and countersigned by the Secretary, which certificate shall be evidence of his title thereto.

In case a certificate of Shares shall be lost, the owner shall be entitled to a duplicate thereof, upon making a statutory declaration of the loss of the original, and of his title thereto, and upon paying a fine of 5s. per Share.

SUBSCRIPTION.

The Subscription for each Share shall be per month for the full term of years, to commence from the day of the month, the Member shall be admitted in respect of each Share; and such Subscription shall be payable in advance at the first monthly Subscription Meeting of the Society, after the admittance of the Member.

Any Member holding one or more Shares may, with the consent of the Board of Directors, subscribe for a part of another Share.

MONTHLY SUBSCRIPTION MEETINGS.

The monthly Subscription Meetings of the Society shall be held at , or at such other place in the said county, , as the Board of Directors shall from time to time appoint on the first in every month, from o'clock until o'clock in the evening, or at such other days and hours as the Board of Directors shall from time to time direct, and of which one week's notice, signed by the Secretary, shall have been given to the Members.

ANNUAL AND HALF YEARLY MEETINGS.

The Annual Meeting of the Society shall be held on the day in the month of in every year, and the Half Yearly Meeting on between the hours of o'clock and o'clock in the evening, at the same place where the last monthly Subscription Meeting shall have been held, or at such other time or place in the said County or City as the Board of Directors shall from time to time appoint, and of which one week's notice, signed by the Secretary, shall have been given to the Members.

At every Annual Meeting of the Society a general Report, signed by three Directors and the Secretary, showing the transactions of the Society during the past year, its present condition and the state of its affairs generally, and the Auditors' Report and balance-sheet shall be read to the Society, and the books and accounts, and the statement of accounts, audited and approved by the Auditors, shall be produced for the inspection of the Members; new Directors and Auditors shall be elected in the place of those who shall retire from office, and other vacant offices (if any) filled up; and the present state and future prospects of the Society may be discussed, and such other business transacted as may be deemed proper and expedient.

MANAGEMENT.

The business and affairs of the Society shall be managed and conducted by a Board of Directors.

DIRECTORS.

There shall be twelve Directors of the Society; and

shall be the first and present Directors of the Society.

Every director shall be a subscriber for Shares at least in the Society.

The Directors shall meet together on the in every month during the continuance of the Society, or oftener if necessary, at such place in the said County and at such hour as they shall think fit, for the purpose of conducting the business of the Society, and every such meeting at which not less than three Directors are present, shall be styled a Board of Directors.

At the first meeting of the Directors, after their election, the Directors present shall elect one of their body as President, and in the event of his absence at any of the subsequent meetings of the Board a Chairman for the evening shall be appointed by the Directors present.

No business shall be entered upon or transacted at any such meeting, unless three Directors at least are present, and every question shall be decided by a majority of votes.

Every Director present, including the Chairman, shall have one vote; and in case the votes are equal the Chairman shall have a casting vote.

Minutes of all the proceedings of every Board of Directors shall be entered in a book to be kept for that purpose, and the minutes so entered shall be signed in the book at the next meeting of the Board, either by the person who was in the chair, or by a Director not in the chair who was present at that meeting.

At every meeting of the Board of Directors, immediately after the minutes of the last meeting shall have been read and signed, the Bankers' book shall be produced and inspected, and the amounts received on account of the Society since the last meeting shall be declared; and the total amount thereof, with the amount of the balance remaining in the hands of the Bankers, shall be entered in the Minute Book; after which applications for withdrawals and advances shall be recorded and considered.

The Board of Directors shall also from time to time inspect

the books and accounts kept by the Secretary, and shall have power to appoint agents to transact any business for the Society, and to pay them out of the funds of the Society such remuneration for their services as they shall think reasonable.

Four Directors shall go out of office in rotation every year at the Annual Meeting, and four others shall be elected in their place by show of hands, or by ballot, if demanded by any Member; but the Directors so retiring shall be eligible to be re-elected.

Any two of the Directors may call a Special Meeting of the Board, by giving at least two clear days' notice.

If any Director shall die, or be desirous of resigning, or shall become incapable to act as Director, or shall become bankrupt or insolvent, or compound with his creditors, or shall borrow the amount or value of his Shares out of the funds of the Society, or shall be removed from his office by a resolution of a Special General Meeting of the Members, he shall thereupon cease to be a Director of the Society; and the Secretary shall forthwith convene a Special Meeting of the Board of Directors, and at such Special Meeting the Board shall appoint another Member of the Society to be a Director in his place.

TRUSTEES.

There shall be Trustees of the Society, and

shall be the first and present Trustees, and shall continue in office during the pleasure of the Members.

The Trustees shall be admitted to all meetings of the Board of Directors, and shall be at liberty to take part in the proceedings thereof, but shall not vote on any question under discussion unless they are qualified in like manner as the Directors.

All the moneys and funds of the Society shall be paid into

the hands of the Bankers to the credit of the Trustees of the Society.

All Deeds and Securities shall be taken in the names of the Trustees for the time being, and shall be deposited in a fire-proof chest, or fire-proof room, to which there shall be three keys, one of which shall be kept by a Trustee, another by the Chairman of the Board of Directors, and the third by the Solicitor or Solicitors for the time being to the said Society, and the chest shall be placed for safe custody with the Bankers of the Society, in the names of the Trustees, and a Schedule of the deeds therein from time to time shall be deposited in the box, and a copy thereof shall be kept in a book by the Secretary.

All advances and payments out of the funds of the Society shall be made by cheques on the Bankers of the Society, signed at a Board of Directors by one Trustee, and at least two Directors, or in case there shall be no Trustee present at the Board, then by three Directors, the Chairman being one; and every cheque shall be countersigned by the Secretary.

All procedings at law or in equity which it shall be necessary to prosecute or defend on behalf of the Society, in the names of the Trustees of the Society, shall be brought or defended by the Solicitor of the Society; and the Trustees of the Society shall be indemnified and saved harmless out of the funds of the Society from all loss in respect thereof,

In case either of the Trustees shall be desirous to be discharged from, or shall become incapacitated to act in the trusts reposed in him, or shall become bankrupt or insolvent, or compound with his creditors, or shall borrow the amount or value of all or any of his Shares out of the funds of the Society, he shall be removed from his office by the resolution of a Special General Meeting of the Members, and shall thereupon cease to be a Trustee of the Society, and the Secretary shall forthwith convene a Special Meeting of the Board of Directors; and at such Special Meeting a new Trustee shall be elected in the place of such Trustee, or of a Trustee dying; and the appointment of every new Trustee shall be signed by one of the continuing Trustees (if any such there be) and three Directors, and be duly certified as a rule of the

Society; and thereupon all the property of the Society vested in such retiring Trustee, either alone or jointly with the continuing Trustees or Trustee, shall vest in the new Trustee appointed in his place for the same estate and interest as the former Trustee had therein, and subject to the same trusts, without any assignment or conveyance whatsoever, except the transfer of stocks and securities in the Government Stocks or Funds of Great Britain and Ireland (if any), and all such stocks and securities, and all other property and effects (if any) which cannot be legally and effectually vested in the new and continuing Trustees or Trustee, without any conveyance, assignment, or transfer, by virtue of these Rules and the provisions of the 10 Geo. 4, cap. 56, section 21, and the 6 & 7 Will. 4, cap. 32, section 4, shall be conveyed, assigned, and transferred at the expense of the Society, so as to vest in such new and continuing Trustees or Trustee upon the trusts, and with the powers under and subject to which the same ought to be held by the Trustees of the Society.

That in the meantime, and until the appointment of such new Trustee, the continuing Trustees shall be competent to act as fully as if they were the sole Trustees of the Society.

The Trustees respectively shall be chargeable only for their own acts and defaults respectively, and not for the acts or defaults of the others or other of them, nor for the acts or defaults of any other person or persons.

In case any Trustee, or the heirs, executors, or administrators of any Trustee so dying, or being removed as aforesaid, shall neglect or refuse to convey, assign, or transfer to the new and continuing Trustees and as the Board of Directors shall direct, any property or effects of the Society which may be vested in him, either alone or jointly, with the continuing Trustees or Trustee, within seven days after he shall have been required so to do in writing under the hand of the Secretary and two Directors, pursuant to a resolution of the Board of Directors, the Trustee or other person or persons, so neglecting or refusing, shall be expelled the Society, and shall forfeit all moneys paid by him or them to the Society and shall wholly cease to have any estate or interest therein, and the amount or value of his or their Share or Shares in

the Society shall be transferred to the credit of the Contingent Fund of the Society, for the benefit of the other Members interested therein, and he or they shall be compelled by all legal and equitable means to make and execute such conveyance, assignment, or transfer, as may have been required of him or them as aforesaid.

SECRETARY.

Mr. shall be the first and present Secretary of the Society.

The Secretary shall attend every meeting of the Directors or Members of the Society, and shall enter in a rough minute book true and correct minutes of all the proceedings of every such meeting, and of all the resolutions passed, and the business transacted thereat, and such minutes he shall afterwards fairly copy in another book, to be read at the next meeting of the like nature, and signed by the Chairman.

He shall also keep all the other books and the accounts of the Society, convene all Special Meetings of the Directors and of the Members, issue all notices, conduct the correspondence of the Society, under the direction of the Board of Directors, and transact such other business as the Board shall from time to time direct.

In the month of in every year he shall prepare from the books of the Society a correct statement of accounts and balance-sheet for the Auditors; and in the month of in every year he shall prepare a Report of the past year's transactions, showing the present condition of the Society, and the state of its affairs, to be submitted to the Board of Directors for approval, and approved by them previously to its being printed and circulated amongst the Members.

The Secretary shall have the custody of all the books, papers, and accounts of the Society (except deeds and securities for money), and at every monthly Subscription Meeting he shall produce the books and accounts of the Society for the inspection of such of the Members as may wish to inspect them, and he shall at all times, whenever required so

to do, produce to any Director or Trustee, or to such person or persons as any Director or Trustee may direct, in writing, any book, paper, or account belonging to the Society or relating to the business or affairs thereof, and shall permit copies to be made thereof, or of any part thereof, or extracts to be taken therefrom, and shall give to any Director or Trustee such information as he may from time to time require concerning the Society or its business or affairs.

At every monthly Subscription Meeting the Secretary shall receive from the Members the Subscriptions and all Fines and other payments due to the Society, and at the time of the receipt thereof he shall enter the same in the cash book, with the name of the Member paying the same, and at the close of the meeting he shall account for and pay over to the Treasurer the total amount of such receipts, and procure the Treasurer's signature to an acknowledgment of such payment in the cash book.

The Secretary shall be allowed out of the funds of the Society for his services a salary of £ per annum, and a fee of per annum on every Share subscribed for; such salary and allowance to be paid quarterly.

SOLICITORS.

Messrs. shall be the first and present Solicitors of the Society.

The Solicitors shall carefully investigate the title to every property that shall be offered as a security to the Society, after the same shall have been reported by the Surveyor as of adequate value, and approved by the Board of Directors, and when necessary consult counsel thereon, and shall report in writing the result of such investigation to the Board of Directors.

They shall prepare all the Mortgage Securities and such other Deeds, Conveyances, and writings as may be necessary for the purposes of the Society, and they shall be held responsible for the due and proper execution of such Deeds, and the deposit thereof, and of the Title Deeds and writings relating thereto, before any advance is made out of the funds of the

Society upon the security thereof; and upon the completion of every Mortgage Security and the deposit thereof, and of the Title Deeds and writings relating thereto in their hands, they shall deliver to the Mortgagor, or to such person as he shall direct, a cheque or cheques upon the Bankers of the Society for the amount of the advance to which such Mortgagor shall be entitled, duly signed as required by these Rules, and shall obtain upon the back of every such cheque the signature of such Mortgagor; and within seven days after the completion of every Mortage the Solicitor shall deposit the Mortgage, and all deeds and writings relating thereto, in the Deed-box of the Society, to be kept at the Bankers, as provided by these Rules, with a list or Schedule of such deeds and writings, and shall deliver a copy of such list or Schedule to the Secretary of the Society; and within ten days after the completion of every Mortgage the Solicitor shall insure such part or parts of the property comprised in the Mortgage as shall be insurable from loss or damage by fire, in such office as the Board of Directors shall from time to time appoint, and shall transact all other legal business of the Society.

The Solicitor shall be entitled to attend all meetings of the Board of Directors and all the meetings of the Members; but he shall not be entitled to vote on any question unless he be a Shareholder.

The Solicitor's charges shall be paid by the Member on whose account they may be incurred, either out of the advance to which such Member shall be entitled, or, if no advance shall be made, then out of the proper moneys of such Member, who shall pay the amount at the next monthly subscription Meeting; and in default of payment such Member shall be fined as for an equal amount of Subscriptions in arrear.

Should any Member object to the amount of the Solicitor's Bill of Costs against him, or any charges therein, such bill shall, if the amount be not otherwise settled, be taxed by the proper officer, as between attorney and client in the usual mannner.

SURVEYORS.

Messrs. shall be the first and present Surveyors of the Society.

The Surveyors shall attend all meetings of the Board of Directors, and on receiving instructions in writing from the Secretary they shall, within seven days from the date thereof, survey any property, offered as security to the Society, and furnish the Board of Directors at their next monthly meeting with a map or ground plan thereof, and a report in writing stating the rent and value of the property, and such other particulars concerning the same as shall from time to time be required by the Board of Directors.

He shall be paid for his survey by the Member whose property shall be surveyed, or out of the advance, if any, which shall be made to him as follows—that is to say, if the advance required be the value of one Share, Shillings; two Shares, Shillings; three Shares, Shillings, and for every additional Share above three, ; but if the property be more than three miles distant from his place of residence, he shall be paid by such Member such a sum not exceeding per mile in addition to the above charges, as the Board of Directors shall from time to time determine to be fair and reasonable, and he shall also be paid by such Member for the Map or Ground Plan of the Premises such a sum, not exceeding , as the Board of Directors shall in each case think fair and reasonable. If no advance shall be made to the Member whose property shall have been surveyed, the Surveyor's charges shall be paid at the next monthly Subscription Meeting, and in default of payment such Member shall be fined as for an equal amount of subscription in arrear.

TREASURER.

Mr. of , shall be the first and present Treasurer of the Society.

The Treasurer shall attend every monthly Subscription meeting of the Society, and at the close thereof shall examine and check the Secretary's account of Subscriptions, Fines, and other Money paid at such meeting, and at the close of the Meeting he shall receive from the Secretary the total amount of his receipts, and sign an acknowledgment thereof in the cash book, and on the following day he shall pay the amount into the hands of the Society's Bankers, to the credit of the Trustees of the Society.

The current expenses, and all payments on account of the Society (except advances made to the Members, for which cheques shall in all cases be delivered to the Member entitled to receive the same) shall be paid by the Treasurer, who shall, from time to time, obtain from one of the Trustees and two of the Directors a cheque for the necessary amount, countersigned by the Secretary; and the Treasurer shall, at the next monthly Subscription Meeting, deliver to the Secretary proper vouchers for such payments respectively, and the Secretary shall enter such payments respectively in the proper book, and sign an acknowledgment thereof in the Treasurer's cash book.

BANKERS.

Messrs. shall be the first and present Bankers of the Society.

All moneys of or belonging to the Society shall be paid into the hands of the Bankers to the credit of the Trustees of the Society, for the time being, and no payment shall be made thereout by the Bankers, except upon a cheque signed by one Trustee and two of the Directors for the time being, or by three Directors and countersigned by the Secretary for the time being.

The Bankers shall keep the Deed-box of the Society, and shall not permit the same to be removed out of their custody, or any deed or document to be taken therefrom, without the authority in writing of one Trustee and two Directors.

AUDITORS.

There shall be two Auditors; and
shall be the first and present auditors.

The Auditors shall remain in office one year, and be eligible for re-election at the Annual Meeting.

The accounts shall be audited, and a balance-sheet, showing the true state of the Society's affairs, signed by the Auditors, prior to every Annual Meeting, and each Auditor shall be allowed for auditing the accounts such a sum, not exceeding , as the Board of Directors shall, previously to the accounts being submitted for examination, determine.

OFFICERS.

Any officer of this Society shall, if required by the Board, give security, pursuant to the provisions of the 10 Geo. 4, cap. 56, sec. 11, for any property entrusted to his charge.

If a charge of gross neglect, improper conduct or incompetency be brought against the Solicitor, Surveyor, Secretary, or Treasurer, the Board of Directors shall, at a special meeting convened for that purpose, investigate the case, in the presence of the party charged if he desires to be present, and if they find sufficient cause they may remove such officer by a vote of at least three-fourths of the Directors of the Society; and in case of such removal, or in case of any vacancy occurring by the resignation or death of any officer, the Board of Directors shall elect a successor, who shall continue in office until the next General Annual Meeting, when his appointment shall either be confirmed by the votes of a majority of members present and voting, or another person shall be elected in his place.

ADVANCES.

When any Member is desirous of having the amount or value of his Share or Shares in the Society advanced to him, he shall sign and send to the Secretary a notice in writing or

application in the form set forth in the Appendix to these Rules, and at the foot or end thereof he shall set forth a statement of the several particulars mentioned at the foot or end of the said form, and such other particulars as shall from time to time be required by the Board of Directors.

Every application for shares, in the form required by the preceding Rule, shall be numbered and entered by the Secretary in a book to be kept for that purpose, in the order in which they are received by the Secretary, who shall report the same to the next Board of Directors, who shall instruct the Surveyor to survey the premises proposed as a security, and report the value thereof to the Board; and all advances shall be made in rotation, according to the order in which the applications are registered in the Book. And in case the Board shall consider the property to be a sufficient security for the required advance, they shall signify to the applicant, in writing, under the hand of the Secretary, their assent to the application, subject to the contract, or conditions of sale and title proving satisfactory to the Solicitor; and shall thereupon instruct the Solicitor to examine the proposed contract or conditions of sale, and if he shall be of opinion that they are not objectionable, then to investigate the title, and report the result of his investigation to the Board; and in case a good and marketable title shall be deduced, or such a title as the Board of Directors, by the advice of the Solicitor, think fit to accept, the Board shall authorize the required advance to be made, upon all arrears of subscriptions, fines, and other payments due from the Member requiring the same being paid up, and upon the due execution, by all proper and necessary parties, of a proper Mortgage security to the Trustees of the Society, pursuant to these Rules.

In case any Member shall require an advance to enable him to purchase real or leasehold property at a public auction, the Board of Directors, after being satisfied in manner aforesaid that the property is of sufficient value to secure the amount, and that the conditions of sale are not objectionable, may, upon payment by the Member of the Surveyor's charges for the survey, and the Solicitor's charges for exa-

mining and reporting on the conditions of sale, depute the Secretary, Solicitor, or Treasurer of the Society to attend the sale and pay the deposit, in case the Member shall be declared the purchaser, provided the price do not exceed the amount which the Board shall be willing to advance on the security of the property; or if the price shall exceed that amount, then, provided the Member shall lodge the amount of the difference in the hands of the Treasurer of the Society, before the deposit is made. And the Board of Directors shall require such personal or other security to be given by such Member to the Trustees of the Society, for the repayment of the amount of such deposit, and all expenses, in case the purchase should not be completed, and a Mortgage to the Society executed, as the Solicitor of the Society may advise.

When a Member shall require an advance for the purpose of building, the value of the land shall be ascertained by or under the direction of the Board, and the title to it investigated in like manner as in other cases; and if the Directors shall determine to make the required advance, such Member shall be entitled, upon a proper mortgage security being executed to the Trustees of the Society, as required by these Rules, to receive the amount in such sums, and at such time or times, as the Directors may think fit and proper, but so, nevertheless, that the advances to be made from time to time shall not exceed the value of the buildings erected at the time of such advance; such value to be determined by the Surveyor of the Society. And when the buildings are finished to the satisfaction of such Surveyor, the balance of the required advance shall be paid, upon all arrears of subscriptions, fines, and other payments which shall be due to the Society from the Member entitled to the advance being paid by him.

If any Member, after receiving the first instalment of the value of his Share or Shares, shall leave the Building to erect which the same shall have been advanced unfinished, or shall neglect to proceed therewith to the satisfaction of the Surveyor of the Society, the Board of Directors, after giving to such Member ten days' notice in writing, signed by the

Secretary, of their intention so to do, may either sell the premises immediately or employ some person or persons to complete the same at the expense of such Member, as the Board shall deem most advantageous to the Society; and such Member shall be responsible for, and make good to the Society, any loss that may accrue in consequence.

MORTGAGES.

Whenever the value of a Share or Shares shall be advanced to any Member out of the funds of the Society, pursuant to these Rules, the property shall be secured to the Society by way of Mortgage until the amount of such Share or Shares shall be repaid to the Society, with all fines and other payments incurred in respect thereof; and every such Mortgage Deed shall be made in such form, and contain such clauses, provisoes, and agreements as the Solicitor for the Society shall think fit.

INSURANCE.

In case any Member having executed a Mortgage to the Society for the value of his Share or Shares, shall make default in payment of the expenses which the Trustees may incur in and about insuring and keeping insured the mortgaged premises with interest thereon, pursuant to the covenant in the Mortgage, he shall be liable to pay, and shall pay to the Society the same fines as he would have incurred for the non-payment of an equal amount of subscriptions at the time appointed for payment thereof.

In case of damage by fire, the Trustees of the Society for the time being shall receive from the Insurance Office the amount payable in respect of such damage, and their receipt, countersigned by the Treasurer of the Society, shall be a sufficient discharge to the Insurance Office for the money therein expressed to be received; and the Board of Directors shall have full power to settle and adjust with the Insurance Office any question relating to such insurance, and to fix the amount to be paid by the Insurance Office in respect of the

damage done to the premises, or to make such arrangement with the Insurance Office as to the rebuilding or repairing of the said premises, or relating thereto, as the Board of Directors shall think reasonable.

The Board of Directors shall at their discretion either lay out the money which shall be received from any Insurance Office as aforesaid, or any part thereof, in repairing the damage done to the premises, or retain and apply the same, or such part thereof as they shall think fit, in or towards payment and satisfaction of the amount which shall be due and owing from the Mortgagor to the Society, and pay the surplus, if any, to the Mortgagor, or to such other person as he or she shall by writing direct to receive the same.

PENALTIES FOR INVALIDATING POLICIES.

Every Member executing a Mortgage to this Society shall, within two days from the time of such execution, give to the Secretary a written statement of any trade carried on in or upon any part of the premises comprised in such Mortgage, or of the existance of any stove or furnace erected thereon, or other matter or thing which would in any way affect the validity of the policy of assurance, and if at any subsequent period any such trade shall be commenced, or erection made, the like statement shall be given; and the Member neglecting to give such statement shall pay a fine at the discretion of the Board of not more than Ten Shillings but not less than One Shilling per week for each Share; and the Board of Directors shall, if they think fit so to do, at least once in every year appoint some competent person to obtain all the information he can with respect to trades, &c., carried on in and about the Mortgaged premises, and to report to the Board accordingly.

GROUND RENT.

Whenever any property mortgaged to the Society shall be subject to any chief or ground-rent, the Mortgagor shall from time to time produce to the Secretary a receipt or acknow-

ledgment thereof within seven days after the same shall become due, or in default thereof the Mortgagor shall pay a fine of Five Shillings; and in case the rent shall not be duly paid within such period of seven days, the Board of Directors may direct the sum to be paid by the Treasurer out of the funds of the Society, and the Mortgagor shall repay the amount at the next monthly Subscription Meeting, together with a further sum of per Share, by way of fine; and in default of payment thereof accordingly, he shall be fined as for an equal amount of subscriptions in arrear.

SALE OF MORTGAGED PROPERTY BY MORTGAGOR.

If any Member who shall have executed a Mortgage to the Society shall be desirous of selling the mortgaged property, subject to the Mortgage, he shall be at liberty so to do with the consent of the Board of Directors, upon first duly transferring the Shares secured by such Mortgage to the intended purchaser, in manner provided by these Rules, and upon such transfer being completed, and all arrears due to the Society from the Mortgagor being paid, and the conveyance to the purchaser executed, such purchaser shall thenceforth become liable to pay all subscriptions payable in respect of such shares, and the Board of Directors, or the Trustees, by their direction, may grant to the original Mortgagor, and at his costs and charges, a release from all future liability in respect thereof.

Every such conveyance to a purchaser, subject to the Mortgage, shall be perused and settled by the Solicitor of the Society at the expense of the Mortgagor, and shall, when executed, be delivered to the Solicitor of the Society, and by him deposited with the other Title Deeds relating to the property comprised therein, as a further security for the moneys secured by the Mortgage.

POWER TO REDEEM.

If any Member who shall have executed a Mortgage to the Society shall be desirous of paying off or redeeming the same, it shall be lawful for him so to do at the first monthly Subscription

Meeting next after the expiration of fourteen days from the service upon the Secretary of a notice in writing signed by such Member of his intention so to do, by paying to the Treasurer at such monthly Subscription Meeting the sum set opposite to the date of such monthly meeting, in column of the Schedule hereto annexed, together with the full amount which shall then be due from him to the Society for subscription, fines, and other payments, including the subscription payable at such monthly Subscription Meeting, and a further sum of per Share by way of redemption fine, and thereupon, or as soon after as conveniently may be, the Mortgage Deed endorsed with a receipt in the form set forth in the Schedule hereto, and signed by the Trustees of the Society, and all other Deeds and Documents relating to the mortgaged property, shall be delivered up to such Mortgagor.

[*If this rule is adopted it should be declared by the mortgage deed, that the amount to be deducted from the sale monies of the premises, if sold, shall be the amount which the Member would under the Rules of the Society have to pay, if desirous of paying off or redeeming his mortgage.*]

REGISTER OF SHARES.

A Share Register Book shall be kept by the Secretary, in which shall be entered in columns the christian and surname, place of residence, profession or business, and date of entrance of each Member of the Society, and the number of Shares held by each Member, with the number and amount of each Share, and the time when the subscription for each Share commenced; and each Member shall sign his name in an appropriate column of such Share Register Book, in testimony of the accuracy of such entries respectively,

CHANGE OF RESIDENCE.

Any Member who shall change his place of abode, shall within one month afterwards give notice in writing thereof, and of his new place of abode, to the Secretary, in order that his new place of abode may be registered in the Share Register

Book, and at the monthly Subscription Meeting next after such notice shall or ought to have been given, such Member shall pay to the Secretary a Register Fee of per Share. And in case any member shall neglect to give such notice as aforesaid, within the period herein-before limited for that purpose, he shall at the next monthly Subscription Meeting pay to the Secretary a fine of per Share.

MARRIAGE OF FEMALE MEMBERS.

Any female Member who shall marry shall within one month afterwards give notice in writing thereof, and of the christian and surname, place of abode, and profession or business of her husband; and at or before the monthly Meeting of the Society next after such marriage the Shares of such female Member shall be duly transferred into the name of her husband, and upon such transfer the same Fees or Fines shall be payable as in other cases of transfer of Shares.

And in case such notice as aforesaid shall not be given within the period above limited for that purpose, a fine of per Share shall be paid by such Member to the Society, and a further fine of per Share, for every month which shall elapse after such notice shall or ought to have been given, until the Shares of such Member shall be duly transferred to the husband.

DEATH.

Upon the death of any Member of the Society holding Shares upon which no advance shall have been made, his legal personal representative shall within one month after his death give notice thereof in writing to the Secretary, stating the christian and surname, place of abode, and profession or business of such legal personal representative, in order that such Shares may be registered in the name of such legal personal representative, or of such other person or persons entitled thereto, as he or she shall by such notice direct, or in default thereof shall pay a fine of per Share to the Secretary; and upon such notice being given, the Shares

of such deceased Member shall be transferred into the name of such legal personal representative, or into the name of such other person or persons entitled thereto as such representative shall direct, and the same Fees shall be payable upon such transfer as upon any other transfer of Shares; and in case such Shares or any of them shall not be transferred as aforesaid, at or before the second monthly Subscription Meeting next after the death of such Member, a fine of per Share shall be paid to the Society for every monthly Subscription Meeting after the first week shall elapse before such transfer shall have been made.

TRANSFER OF SHARES.

Any Member shall be at liberty to transfer all or any of his Shares to any other Member of the Society, or to any other person desirous of becoming a Member, upon giving to the Secretary seven days' notice in writing prior to a monthly Subscription Meeting of his intention so to do, such notice containing the christian and surname, place of abode, and profession or business of the proposed Transferee, and the number and amount of each Share proposed to be transferred, and the amount of the consideration to be paid or given by the Transferee for such transfer, and at the first monthly meeting next after the service of such notice, a transfer of the Share or Shares specified in such notice, in the form set forth in the Schedule hereto, shall be endorsed upon the original certificate of Shares and signed by the Transferer and also by the Transferee, and deposited in the hands of the Secretary. And thereupon all arrears of subscriptions, fines, and other payments due from such Member being first paid, such Share or Shares shall be transferred into the name of the Transferee in the Share Register Book of the Society, and the Transferee shall sign his acceptance of such Share or Shares in an appropriate column of the said book, and a fee of per Share shall at the same time be paid to the Society by the Transferee; and upon such payment being made the Secretary shall within seven days deliver to the Transferee a new certificate or certificates of such Shares.

WITHDRAWALS.

Any person who shall have been a Member of the Society for six months, and shall not have received any advance out of the funds of the Society, shall be at liberty to withdraw from the Society upon any monthly Subscription Meeting, upon giving to the Secretary one month's previous notice in writing of his intention, and upon payment to the Secretary at the time of serving such notice of a fine of per Share, and the full amount then due from such Member for subscription, fines, and other payments.

But the Board of Directors shall have full power, from time to time, to limit the number of Shares that shall be withdrawn in any one month, and all applications for advances shall have priority over notices of withdrawal.

The sum per Share to be paid to any Member on his withdrawal from the Society, at any monthly Subscription Meeting, is specified in column of the Schedule hereto annexed.

The legal personal representatives, widows, and guardians of infant children of deceased Members entitled to the Shares of such deceased Members, and the guardians or committees of Members becoming lunatic or of unsound mind, shall have priority over other Members in withdrawing from the Society.

And in case any Member shall become lunatic or of unsound mind, and no guardian or committee shall have been legally appointed, it shall be lawful for the Board of Directors to direct payment of the amount to which such Member would have been entitled on withdrawal from the Society to the person maintaining such Member, at the expiration of six months after a request in writing, signed by such person, shall have been left with the Secretary, upon satisfactory evidence being given to the Board of the lunacy or unsoundness of mind of the Member, and that he has been maintained during that period by the person so applying, and upon payment of all arrears of subscriptions, fines, and other payments payable to the Society in respect of such Shares, and upon such person giving to the Trustees of the Society

such indemnity against all claims in respect of such Shares as the Board shall think fit to require for the security of the Society.

COMPULSORY WITHDRAWALS.

Whenever there is any balance in the hands of the Bankers, not wanted for advances or other claims, the Board of Directors may require the Members of the Society who have not received advances to withdraw by ballot the value of as many Shares as shall be sufficient to exhaust such balance, or so much thereof as they shall think it expedient to have withdrawn.

In balloting for such withdrawal each Share shall be drawn separately, and no Member shall be compelled to withraw the value of a second Share until every other Member shall have withdrawn one.

VOTING.

All elections and questions at any meeting shall be decided by a majority of votes, to be taken openly; and when the votes are equal the Chairman of the Meeting shall have a casting vote.

No Member shall be entitled to attend any meeting of the Society, or to vote on any question, without producing his certificate of Shares, if required so to do by the Secretary or any Member present at such Meeting.

When the conduct or affairs of any officer or Member are under discussion at any meeting of the Society, such may be present; but he may not be present when the votes are taken.

CONTINGENT FUND.

All moneys received for copies of Rules, fines, fees, and other things (except monthly subscription and redemption money) shall be carried by the Secretary to the credit of an account to be entitled "The Contingent Fund." And all expenses for printing, rent of offices, salaries and other outgoings (except advances and withdrawals) shall be charged to the debit of the same account in the books of the Society.

LEGAL PROCEEDINGS.

No legal proceedings shall be commenced by or on behalf of the Society against any person whomsoever without the sanction of a special meeting of the Board of Directors.

SERVICE OF NOTICES.

Service of any notice, by leaving the same at the place inserted in the Share Register Book of the Society, as the place of residence of any Member, or by sending the same by post addressed to the Member at such place, shall be deemed good service upon such Member.

FINES.

The fines for the non-payment of monthly subscriptions at the time and place appointed, or to be from time to time appointed for payment thereof, shall be Sixpence per month per Share for the first month the subscription shall be in arrear; One Shilling per month per Share for the second month; One Shilling and Sixpence for the third month; and so on, increasing in the same proportion every month. And when the Fines which a Member has incurred shall equal the amount of the Subscriptions paid by him, the Share or Shares of such Member shall become forfeited to the Society, and he shall thenceforth cease to have any interest in the funds of the Society in respect upon such Shares.

But the Board of Directors shall have power to remit or waive such forfeiture upon payment by the Member of such fine, upon such terms and conditions as they in their discretion shall think fit.

RE-CONVEYANCE.

The Trustees for the time being shall, on the withdrawal of any Member, and when all advances and other payments have been repaid by him, at the cost of the several Members requiring the same, indorse upon every Mortgage given to the

Society by such Members respectively, a receipt for all moneys intended to be secured thereby, in the form in the Schedule pursuant to the 6 and 7 William IV., cap. 32, sec. 5, and shall deliver up the same, with all other deeds and documents which shall have been deposited with them by such Member.

ARBITRATION.

The Board of Directors shall determine all questions which may arise upon the construction of the rules of the Society, and also all matters in difference between any Member of the Society, relating to the Society, or between any Member and any officer of the Society, if the parties shall consent in writing to submit to their decision, and such decision shall be final; but if otherwise, reference shall be made to arbitration, pursuant to 10 Geo. IV., cap. 56, sec. 27.

At the first meeting of the Society after the enrolment of these Rules, five Arbitrators shall be elected—none of the said Arbitrators being beneficially interested, directly or indirectly, in the funds of the Society—and in each case of dispute the names of the Arbitrators shall be written on pieces of paper, and placed in a box, and the three whose names are first drawn by the complaining party, or by some one appointed by such party, shall be Arbitrators to decide the matters in difference, whose decision shall be final and binding on all parties. The costs of the reference shall be paid by such party, or by the parties in such proportions as the Arbitrators shall direct. The party requiring the arbitration shall deposit with the Secretary a sum to be fixed by the Board of Directors to compensate the Arbitrators for their trouble.

RULES.

Every Member, on joining the Society, shall pay for a copy of the Rules.

No addition to, alteration in, or repeal of these or any future Rules shall be made, unless at a General Meeting of

the Society convened for that purpose, by giving to each Member seven days' notice of the time, and place, and object thereof, and in pursuance of a requisition by seven Members, and addressed to the Secretary, specifying the addition, alteration, or repeal proposed to be made, which requisition shall be publicly read at two regular Monthly Subscription Meetings of the Society, held next before such General Meeting; and no such addition, alteration, or repeal shall be made but with the concurrence of three-fourths of the Members present at such General Meeting.

In the construction of the Rules, unless there be something in the subject or context repugnant to such construction, every word importing the singular number only shall mean and include several persons or things, as well as one person or thing, and the converse; and every word importing the masculine gender only shall mean and include a female as well as a male, and the words "month" and "monthly" shall mean a calendar and not a lunar month.

SCHEDULE.

FORMS REFERRED TO IN THE FOREGOING RULES.

No. 1.—SHARE CERTIFICATE.

Share. Register No.

This is to certify that of is the proprietor of one share, of the value of £ in the capital stock of the benefit building society, subject to the payment of subscriptions and other liabilities according to the rules of the society, which may from time to time be in force.

As witness our hands this day of one thousand eight hundred and date of taking up the share

counter signed

Secretary. Directors.

No. 2.—NOTICE OF SALE BY AUCTION.

To the Secretary of the Benefit Building Society.

I, the undersigned, being a member of the above society, and having obtained advances of on my shares in this society, wish to purchase, according to the rules of the said society, lot specified in the particulars of sale herewith forwarded. I therefore hereby request you to let the solicitor peruse them on my behalf, and if he shall consider the particulars such as it would be prudent to purchase under, to give notice to the surveyor of the society, to examine and report as to the eligibility of the property comprised in the lot before mentioned. And I hereby request that the said opinions be laid before the directors, and that they will authorize the money required as a deposit to be advanced in part payment of the purchase money, in case the aforesaid lot shall be declared to have been purchased by me, within the limits specified in the reports of the solicitor and surveyor.

Dated, Signed, Register No.
Residence,

No. 3.—NOTICE TO TRANSFER SHARES.

To the Secretary of the Benefit Building Society.

I, being a member of the above society, hereby give you notice, that it is my wish to transfer my shares in the above society, to for the sum of £ and I request you to lay this application before the board of directors for their consideration.

Signed, Residence, Register No.

No. 4.—TRANSFER OF SHARES.

I, of in the county of one of the shareholders of the building society, in consideration of the sum of sterling paid to me by hereby assign and transfer to the said his executors, administrators, and assigns, shares of and in the funds of the said association, to hold the same unto the said his executors, administrators, and assigns, subject to the payments, rules, and regulations of the society, and I, the said do hereby agree to accept the said shares if admitted a member, subject to the same payments, rules, and regulations. As witness our hands and seals this day of one thousand eight hundred and

Name of original member, No.
Residence,
Name of purchaser,
Residence,

No. 5.—APPLICATION FOR ADVANCES.

To the Secretary of the Benefit Building Society.

I, being a member of the above society, registered No. hereby request you to register my name in the application book, as being desirous to receive advances on my shares subscribed for in this institution, on or about the day of 18 I hold shares, and it is my wish to take up additional shares. Dated this day of one thousand eight hundred and

Signed,
Residence,

No. 6.—RECEIPT TO BE ENDORSED ON SATISFIED MORTGAGES.

We whose names are hereunder written, being trustees of the within-named society, do hereby acknowledge to have received from all monies intended to be secured by the within written deed, as witness our hands, this day of

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No. 7.—PARTICULARS FOR BUILDING ADVANCES.

Member's Name, Residence
Occupation Register No.
Date of Admission, Application, No. Date
Situation of land, No. of square yards,
If freehold or leasehold, Price per yard,
If leasehold, is it an under lease,
Date of lease, for what number of years
How many unexpired
Name of owner, Residence,
Amount of ground rent,
when payable to whom payable,
If the land is subject to any other payments besides the ground rent,
Covenants of lease,
Nature of the buildings to be erected
Total estimated cost
Name of architect furnishing the plans,
Name of builder,
No. of shares now held,
Amount of advances required,

Additional shares to be taken up
Total weekly or monthly payment,
Amount paid in to this date
Report of inspecting directors
Report of solicitor on title deeds,
Report of surveyor on land and proposed buildings.
Time of commencing the building,
When considered by the directors,
Amount to be advanced Minute, No.
Cost of lease
Solicitor's charges,
Surveyor's charges,
Insurance,
Question to member:—When the solicitor of the society has prepared the mortgage deeds, shall you wish to submit them to your solicitor.

When the member intends to furnish his own plans for building, it is desirable that he should produce a plan and particulars of the position of the property, the streets, drains, boundaries, and contents in superficial yards, the cardinal points, and the names of the owners of the adjoining property; also a basement plan with drains marked; a plan of the ground floor of the house, showing the privies and yards; a plan of the chamber floor; a front elevation of the building; and a detailed specification of work, such as excavations, masons, bricklayers, slaters, plasterers, plumbers, glaziers, and painters, grates, &c.

N. B.—A similar form to the above will be used when properties or land are about to be purchased.

No. 8.—NOTICE OF WITHDRAWAL.

I, residing Register No.
in the benefit building society, do hereby give you notice that it is my desire to withdraw the amount paid by me on my share numbered from the said society, and request that you will duly lay this notice before the directors.
Name,
Date,

MORTGAGE IN FEE TO THE TRUSTEES OF A BENEFIT BUILDING SOCIETY.

This indenture, made the day of , in the year , between A. B., of , of the first part, and E. F., of , G. H., of , and I. K., of , (trustees of a benefit building society, called the Benefit Building Society, established according to the provisions of an Act of Parliament passed in the 6th and 7th years of the reign of King William the 4th, intituled "An Act for the Regulation of Benefit Building Societies,") of the second part.

Whereas the said A. B. is seised of or entitled to the hereditaments hereafter mentioned, and intended to be hereby granted and conveyed with the appurtenants for an estate of inheritance in fee simple in possession, free from incumbrances. And whereas the said A. B. is a member of the said building society, and has subscribed for shares, therein numbered respectively , and by the duly enrolled rules and regulations of the said society he is entitled to receive out of the funds of the said society the sum of £ , being the amount or value of his said shares therein, upon such mortgage security being executed to the trustees of the said society for securing the payments to become due in respect of the said shares as hereafter contained. Now this indenture witnesseth that in consideration of the premises and of the sum of £ sterling to the said A. B., in hand, paid out of the funds of the said society by the said several persons parties hereto of the second part as such trustees as aforesaid, the receipt of which said sum of £ and that the same is in full satisfaction and discharge of the amount or value of his said shares in the said society, he the said A. B. doth hereby acknowledge, and from the same doth release and discharge the said parties hereto of the second part and the said society and the funds thereof for ever by these presents. He the said A. B. doth by these presents grant, release, and convey unto the said several persons parties hereto of the second part, and their heirs, all that, &c.,

together with all liberties, privileges, easements, advantages, and appurtenants to the said messuage and hereditaments, or any of them, appertaining, or with the same, or any of them now or heretofore demised, occupied, or enjoyed, or reputed or known as part or parcel of them, or any of them, or appurtenant thereto. And all the estate, right, title, inheritance, use, trust, property, claim, and demand whatsoever of the said A. B. in, to, and out of the same hereditaments and every part thereof, To have and to hold the said messuage or tenement and hereditaments, with the appurtenants, unto and to the use of the said several parties hereto of the second part, their heirs and assigns for ever, subject neverthe-

less to the proviso for redemption hereinafter contained. Provided always, and it is hereby agreed and declared, that if the said A. B. his heirs, executors, administrators, or assigns, shall at all times make the several payments, whether for subscriptions, redemption money, fines, or otherwise, which shall become due and payable according to the rules and regulations for the time being of the said society in respect of the said shares, and observe and perform the said rules and regulations for the time being, then the trustees or trustee for the time being of the said society shall endorse upon these presents a receipt for all monies intended to be hereby secured. Provided also, and it is hereby further agreed and declared, that in case the said A. B., his heirs, executors, administrators, or assigns, shall, for six successive monthly nights, make default in such several payments as aforesaid, or any of them, or shall at any time hereafter make default in the observance or performance of such rules and regulations as aforesaid, then and in any or either of the said cases, and at any time thereafter, it shall be lawful for the said several persons parties hereto of the second part, or the survivors or survivor of them, or the executors or administrators of such survivor, or their or his assigns, to appoint a person to collect the rents and profits of the said hereditaments, or any part thereof, and thereout pay all costs and charges incurred in or about such collection, and all sums of money which shall be due and owing from the said A. B., his heirs, executors, administrators, or assigns, to the said society, according to the rules and regulations thereof, in respect of the said shares, and shall pay the surplus (if any) of the said rents and profits unto the said A. B., his heirs, or assigns; but if the said rents and profits shall at any time be insufficient to answer the purposes aforesaid, then it shall be lawful for the said parties hereto of the second part, or the survivors or survivor of them, or the executors or administrators of such survivor, or their or his assigns, at any time thereafter, if they or he shall think fit, without the concurrence or consent of the said A. B., his heirs or assigns, absolutely to sell and dispose of the said messuage or tenement and hereditaments, or any part thereof, by public auction; but if no public sale can be effected, then by private contract, and subject or not subject to any special conditions relating to the title or otherwise as shall be deemed expedient, with liberty to buy in the said premises, or to rescind any contract made for the sale thereof, and to re-sell the same in manner aforesaid, without responsibility for any loss by such re-sale, and to make and execute such contracts, agreements, and assurances as may be necessary, and out of the unapplied rents and profits previous to such sale, and the money to arise from such sale or sales in the first place, retain to themselves or himself all costs and expenses incurred in or about the execution of the trusts and powers herein contained, or any of them, and in the next place retain in trust for the said society all sums of money which shall then be in arrear or have become due and owing to the society in advance from the said A. B. his heirs,

executors, administrators, or assigns, in respect of his said shares therein by virtue of these presents, or the rules, for the time being, of the said society, it being hereby agreed by the said parties hereto that in case such sale as aforesaid shall take place, all and every the sums of money which, but for this declaration, would, according to the rules of the said society, have thereafter been payable by the said A. B. his executors, administrators, or assigns, to the said society for subscriptions, redemption money, or otherwise, in respect of the said shares, by monthly payments shall then become due and payable to the said society in advance, and shall be considered as then in arrear, and the amount thereof shall be ascertained by the said trustees or trustee, and shall pay the residue (if any) of the said sale monies unto the said A. B., his heirs or assigns. And it is hereby agreed and declared that every receipt in writing of the said trustees, or the trustees or trustee for the time being, acting in execution of the trusts or powers aforesaid for any money payable to them or him under or by virtue of these presents, shall be a sufficient discharge for the money therein mentioned to be received, and that the person or persons to whom any such receipt shall be given, and his, her, or their heirs, executors, or administrators, shall not be obliged to see to the application thereof, or be answerable for any misapplication or non-application thereof, nor be bound to inquire into the necessity or expediency of such sale or sales, or whether default has been made in the aforesaid payments or observances, nor be affected with notice that no such default has been made. And the said A. B. doth hereby for himself, his heirs, executors, and administrators, covenant with the said trustees, their heirs, and assigns, in manner following, namely, that he the said A. B., his heirs, executors, administrators, or assigns, shall and will from time to time, and at all times hereafter well and truly pay the several sums of money which, under and by virtue of the said rules and regulations of the said society, shall henceforth become due and payable in respect of his said shares therein, whether for subscriptions, redemption money, fines, or otherwise, at the respective times and in the place and manner prescribed by the said rules and regulations, for the time being, of the said society, and also will observe and perform, all and every the said rules and regulations in respect of the same shares which, on the part of the said A. B. his heirs, executors, administrators, or assigns, ought henceforth to be observed and performed in respect thereof, according to the true intent and meaning of the said rules and these presents. And that, &c. (*usual covenants for title and power of distress.*)

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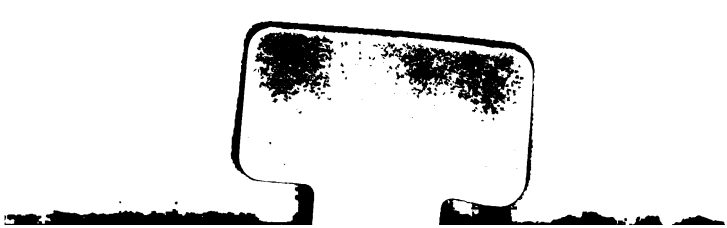

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